

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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REPUBLIC OF TRINIDAD AND TOBAGO

FINAL REPORT

(Approved in the plenary session held on March 11, 2005)

**COMMITTEE OF EXPERTS ON THE FOLLOW-UP MECHANISM FOR THE
IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST
CORRUPTION**

**REPORT ON THE IMPLEMENTATION IN THE
REPUBLIC OF TRINIDAD AND TOBAGO
OF THE PROVISIONS OF THE CONVENTION SELECTED FOR REVIEW WITHIN THE
FRAMEWORK OF THE FIRST ROUND¹**

INTRODUCTION

1. Legal-institutional framework²

The twin island state of the Republic of Trinidad and Tobago gained full independence from Great Britain on August 31st, 1962. On September 24th, 1976 it became a Republic within the Commonwealth, and in the same year adopted a Republican Constitution which replaced its independence Constitution.

The Constitution declares that any law inconsistent with its provisions is void to the extent of that inconsistency. Parliament and all other organs of State are obligated to perform their duties in a manner that conforms to the Constitution. The Constitution is predicated upon the division of powers between the three branches of Government: the Executive, the Legislature and the Judiciary.

In the executive branch, the President, who is elected by an electoral college comprising all members of a bicameral Parliament, holds office for a term of five years. The President acts as Head of State and Commander-in-Chief of the armed forces. The Constitution provides that the executive authority of Trinidad and Tobago is vested in the President.

The Constitution states that in the exercise of his functions under the Constitution, the President shall act in accordance with the advice of Cabinet or a Minister acting under the general authority of Cabinet, except in cases where other provision is made by the Constitution.

The President is required by the Constitution to appoint as Prime Minister a member of the House of Representatives who is the Leader in that House of the party which commands the support of the majority of members of that House. The Prime Minister is the Head of Government.

The President appoints as Leader of the Opposition the member of the House of Representatives who, in his judgment, is best able to command the support of the greatest number of members of the House of Representatives who do not support the Government.

¹ This report was approved by the Committee, in accordance with Articles 3(g) and 26 of the Rules of Procedure and Other Provisions, during the plenary session held on March 11, 2005, within the framework of its Seventh Regular Meeting, held between the 7th and 12th of March, 2005, at OAS Headquarters, Washington D.C., United States of America.

² Updated Response of the Republic of Trinidad and Tobago to the Questionnaire, Introduction. With the consent of the Republic of Trinidad and Tobago, its Response to the questionnaire, as well as documents from civil society, in keeping with the *Rules of Procedure and Other Provisions*, are published on the following web site: http://www.oas.org/juridico/spanish/corresp_tto.htm

Cabinet consists of the Prime Minister, the Attorney General and such number of other appointed Ministers, as the Prime Minister considers appropriate.

The Constitution vests Cabinet with the general direction and control of the Government of Trinidad and Tobago and makes Cabinet collectively responsible to Parliament.

The President acting in accordance with the advice of the Prime Minister may assign to the Prime Minister or any other Minister responsibility for the administration of any department of Government.

The Attorney General is constitutionally responsible for the administration of legal affairs in Trinidad and Tobago.

The Director of Public Prosecutions is constitutionally responsible for instituting and undertaking criminal proceedings against any person before any court in respect of any offence against the law of Trinidad and Tobago.

In the legislative branch, the legislative power of Trinidad and Tobago resides in Parliament, which according to the Constitution shall consist of the President, the Senate and the House of Representatives.

The House of Representatives which is the lower house of Parliament, consists of thirty-six members corresponding with the number of constituencies into which Trinidad and Tobago is divided. These members are elected by universal adult suffrage in accordance with the first-past-the-post system (relative majority system) at General Elections which are held within three months after every dissolution of Parliament.

Parliament, unless sooner dissolved, shall continue for five years from the date of its first sitting after any dissolution, and then shall stand dissolved.

The Senate consists of thirty-one members appointed by the President. Of the thirty-one senators, sixteen are appointed on the advice of the Prime Minister, six are appointed on the advice of the Leader of the Opposition and nine are appointed by the President in his discretion from outstanding persons from economic, social or community organizations and other major fields of endeavor.

Parliament is empowered by S.53 of the Constitution to make laws for the peace, order and good government of Trinidad and Tobago.

With the passage of an Act of Parliament in 1980, the Tobago House of Assembly was established for the purpose of making better provision for the administration of the island of Tobago. The 1980 Act was repealed and replaced with a new Tobago House of Assembly Act in 1996. Under the 1996 Act the Assembly is a body corporate consisting of twelve Assemblymen elected by the people of Tobago, four appointed Councilors and a Presiding Officer. The Assemblymen elect from among their members the Chief Secretary and the Deputy Chief Secretary. The Assembly continues for four years from the date of its first sitting.

As prescribed by the Constitution, the Cabinet of Trinidad and Tobago retains general direction and control of the Tobago House of Assembly. The Tobago House of Assembly is however responsible for the formulation and implementation of policy on matters set out in Fifth Schedule of the Act. (See Appendix at pages 1-36).

In the judicial branch, the Chief Justice has overall responsibility for the administration of justice in Trinidad and Tobago and heads the independent Judiciary. He is appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.

Judges are appointed and promoted by the President acting on the advice of the constitutionally established Judicial and Legal Service Commission.

The Judicial and Legal Service Commission which comprises the Chief Justice as Chairman, the Chairman of the Public Service Commission and two former judges appoints Masters, Magistrates and all other judicial officers including state prosecutors, state counsel and legal draftsmen.

The Judiciary comprises the higher Judiciary (the Supreme Court of Judicature) and the lower Judiciary (the Magistracy).

The Supreme Court consists of the High Court and the Court of Appeal. The Magistracy is divided into 13 districts.

There is a separate Industrial Court and a Tax Appeal Board, which are superior courts of record created by statute.

Appeals from the Magistracy and the High Court lie to the Court of Appeal. The Chief Justice is the President of the Court of Appeal. Appeals from the Court of Appeal lie with the Judicial Committee of the Privy Council³ in England, sometimes as of right and sometimes with leave of the Court of Appeal. The Privy Council is the highest Court of Appeal of Trinidad and Tobago.

2. Ratification of the Convention and adherence to the Mechanism

According to the official register of the OAS General Secretariat, the Government of the Republic Trinidad and Tobago both signed the Inter-American Convention against Corruption and deposited the instrument of ratification on April 15th, 1998.

In addition, the Republic of Trinidad and Tobago signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2001, on the occasion of the 31st Regular Session of the OAS General Assembly in San Jose, Costa Rica.

³ In its Updated Response, the Republic of Trinidad and Tobago writes: "Legislation was introduced in Parliament of Trinidad and Tobago to replace the Privy Council as the country's highest Court of Appeal with that of the Caribbean Court of Justice (CCJ)." P.5.z

I. SUMMARY OF INFORMATION RECEIVED

1. Response from the Republic of Trinidad and Tobago

The Committee wishes to underline the cooperation received from the Republic of Trinidad and Tobago throughout the review process; this cooperation was made evident by, among other things, its timely response to the questionnaire and its ongoing availability to clarify or complete the contents of said questionnaire. In its response, the Republic of Trinidad and Tobago appended a list of pertinent legislation which has been included in the Appendix to this report. Also included were reports and reviews of legislation from various public committees.⁴

2. Document submitted by civil society

The Committee also received within the established timeframe⁵ a report by “The Trinidad and Tobago Transparency Institute” – the Trinidadian Chapter of “Transparency International”.⁶

II. REVIEW OF THE IMPLEMENTATION BY THE REPUBLIC OF TRINIDAD AND TOBAGO OF THE PROVISIONS SELECTED

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE THEM (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1 CONFLICTS OF INTEREST

1.1.1 Existence of provisions in the legal framework and/or other measures and enforcement mechanisms.

As detailed in its Response to the Questionnaire, the Republic of Trinidad and Tobago has a set of standards of conduct at the constitutional, statutory and regulatory levels, as well as mechanisms and other measures designed to prevent conflicts of interest that may occur within the public service.

Of the constitutional provisions related to the above mentioned standards of conduct, the following should be highlighted:

- Section 4(b) guarantees “the right of the individual to equality before the law and the protection of the law”, and Section 4(d) guarantees “the right of the individual to equality of treatment from any public authority in the exercise of any functions.”

⁴ *Integrity in Public Life – A Review of Legislation – A Green Paper, 1995; Report of the Police Service Commission 1995-1998; Report of the Auditor General on the Public Accounts of T&T, 1999-2000; Annual Report to Parliament by The Integrity Commission – both 2000 and 2001; The Trinidad and Tobago Transparency Institute Report on Activities – 2001.*

⁵ Decision entitled “Updating Questionnaire Responses.” This decision was adopted by the Committee of Experts at its February 13, 2003, session, during its Third Regular Meeting (February 10-13, 2003), held at OAS headquarters, Washington, D.C., United States of America.

⁶ This document was received via e-mail on August 30, 2004. In addition, during an informal meeting with the members of the Committee, “The Trinidad and Tobago Transparency Institute” made a presentation on this document.

- Sections 110 and 111 of the Constitution create and define the responsibilities of the Judicial and Legal Service Commission which appoints the Solicitor General, Chief Parliamentary Counsel, Director of Public Prosecutions, Registrar General, or Chief State Solicitor, as well as “such public offices as may be prescribed, for appointment to which persons are required to possess legal qualifications,”⁷ such as Masters, Magistrates and all other legal officers including state prosecutors, state counsel and legal draftsmen, unless the Prime Minister disapproves of the appointment.⁸
- Constitutional provisions regarding oversight of the judicial branch, such as Sections 137 that requires, under certain circumstances, that the President appoint a tribunal to investigate the conduct of a Judge or the Chief Justice at the request of the Judicial and Legal Service Commission or Prime Minister, respectively, and to remove the same if advised to do so by the Prime Minister under Section 137(4); and under other circumstances that the President remove a judge in accordance with the advice of the Judicial Committee⁹ after the latter has performed an investigation at the request of the President, in accordance with Section 137(2). Additionally, Section 121(2) of the Constitution of the Republic of Trinidad and Tobago restrains the Public Service Commission from removing, or inflicting “any punishment on a public officer on the grounds of any act done or omitted to be done by that officer in the exercise of a judicial function conferred upon him unless the Judicial and Legal Service Commission concurs therein.” Also, Sections 136 and 137 prohibit altering the salaries or terms of service of judges to their disadvantage.
- Constitutional provisions that restrict government officials from holding more than one public office, such as Section 48(e) which disqualifies certain people from being elected to the House of Representatives who hold any office which involves “responsibility for, or in connection with, the conduct of any election or any responsibility for the compilation or revision of any electoral register”; and Section 71(4) which prevents certain elected officials from holding office as a member of the Elections and Boundaries Commission.
- Constitutional provisions that create offices and commissions and vest them with investigative and disciplinary responsibilities such as Section 91, relating to the office of the Ombudsman; Section 120 relating to the Public Service Commission; Section 126, applicable generally to all Service Commissions; and Section 138 creating the Integrity Commission.

The Republic of Trinidad and Tobago also has statutes and regulations consistent with the purposes and requirements of the above-mentioned constitutional provisions, as well as mechanisms to enforce them. The following is a list of these provisions and mechanisms:

- The Code of Conduct contained in Part IV of the Integrity in Public Life Act. This Code covers two groups of public officials: persons exercising public functions and persons in public life. It is important to note that the applicability of different parts and provisions within the Integrity in Public Life Act, as well as certain other Acts, is defined by these two categories of public

⁷ Constitution of the Republic of Trinidad and Tobago, Section 111(3).

⁸ See Response of Trinidad and Tobago, p. 4.

⁹ The ‘Judicial Committee’ “means the Judicial Committee of the Privy Council established by the judicial committee act, 1883 of the United Kingdom as from time to time emended by any act of Parliament of the United Kingdom.” P. 13 of the Constitution of Trinidad and Tobago.

employees. Provisions indicating this delineation are found within the Acts themselves and the Constitution:

- Persons exercising public functions are defined in the Integrity in Public Life Act as “all persons holding office under the Public Service, Judicial and Legal Service, Police Service, Teaching Service and Statutory Authorities’ Service Commission, as well as members of the Diplomatic Service and Advisers to the Government”.¹⁰ To understand what is meant by ‘persons holding office under the Public Service’, Section 3 of the Constitution defines the Public Service as “the service of the Government of Trinidad and Tobago or of the Tobago House of Assembly established by section 3 of the Tobago House of Assembly Act, in a civil capacity”. The Constitution further provides, in Sections 3(4) and 3(5), that a person shall not be considered to hold an office in the public service by reason only that he holds the offices that are mentioned in subsections 3(4) and 3(5)¹¹; on one reading of the Constitution, this appears to exclude all of the public officials mentioned in Sections 3(4) and 3(5) from the Public Service and therefore from the provisions of the Code of Conduct in Part IV of the Integrity in Public Life Act, unless, as in the case of commissioners, they are specifically designated as such in the Integrity in Public Life Act.
- Persons in public life are defined in the Schedule to the Integrity in Public Life Act as: “Members of the House of Representatives; Ministers of Government; Parliamentary Secretaries; Members of the Tobago House of Assembly; Members of Municipalities; Members of Local Government Authorities; Senators; Judges and Magistrates appointed by the Judicial and Legal Service Commission; Members of the Boards of all Statutory Bodies and State Enterprises including those bodies in which the State has a controlling interest; and Permanent Secretaries and Chief Technical Officers.”¹²
- Codes of conduct specific to particular departments, agencies, and branches of government:
 - The Tobago House of Assembly Act has a few conflict of interest provisions applicable to members of the Tobago House of Assembly.¹³ Section 15(2)(a) disqualifies any citizen from holding office in the Assembly if that citizen has an undischarged bankruptcy, and sections 15(d)-(f) disqualify citizens from holding office in the Tobago House of Assembly if they hold certain other government positions or are a member of “a municipal or regional corporation.” Section 16(8) also restricts Secretaries and Presiding Officers from engaging in “any trade, business, occupation or other undertaking for profit or remuneration....”

¹⁰ S. 2 of the Integrity in Public Life Act.

¹¹ These include the offices of the President, the Speaker, the President of the Senate, Deputy Speaker or Vice-President of the Senate, Minister, Parliamentary Secretary, member or temporary member of the Senate or member of the House of Representatives; Ombudsman or member of the Integrity Commission or member of any other Commission established by this Constitution; Judge or member of a Superior Court of Record or any special judicial tribunal established by Act of Parliament or member of the Public Service Appeal Board; member of any board, commission, committee or similar body, whether incorporated or not, established by any enactment; member of the personal staff of the President; a consultant or adviser appointed for specific purposes; or a person appointed on contract for a period not exceeding five years. Also, any special office established by or under an Act.

¹² Part I, Section 2 of the Constitution.

¹³ S. 15(2)(f) and 16(8).

- The Police Service (Amendment) Regulations contain several provisions addressing the issue of conflicts of interest with respect to police officers, such as activities outside the service, gifts and indebtedness.¹⁴
- The Civil Service (Amendment) Regulations contain some provisions which relate to acts committed while employed in the civil service, such as section 148 requiring civil servants to report any criminal charges to a Permanent Secretary or Head of Department, and section 149 prohibiting the participation in a political meeting while on duty or while wearing a uniform.¹⁵
- At several places in the Response of the Republic of Trinidad and Tobago, mention is made of the Teaching Service Commission and the Judicial and Legal Service Commission. However, with the exception of general enforcement mechanisms, there are no regulations relevant to these Commissions.
- The Prevention of Corruption Act, which may soon be amended,¹⁶ deals with misuse of official information by public officials, and bribery or solicitations of bribery by such persons.
- The proposed Code of Ethics for Parliamentarians including Ministers contains provisions such as section 1 requiring Ministers and Members of Parliament to disclose any actual or potential conflicts of interest relating to any debate or proceeding of a House or its committees. It also contains provisions such as sections 8 and 9 prohibiting Parliamentarians from engaging in nepotism or taking personal pecuniary advantage of information obtained by them during the course of their official duties.

The following are enforcement mechanisms relating to the above provisions:

- The Integrity Commission, established statutorily by Part II, section 4 of the Integrity in Public Life Act, is responsible for, among other things, receiving and investigating complaints regarding, specifically, any alleged breach of the Act, or of the Prevention of Corruption Act,¹⁷ and, generally, under section 1(g) investigating “the conduct of any person falling under the purview of the Commission which, in the opinion of the Commission, may be considered dishonest or conducive to corruption,” and under Section 1(f) examining “the practices and procedures of public bodies, in order to facilitate the discovery of corrupt practices.” Generally, the Integrity Commission also plays a supervisory and advisory role in relation to other public bodies’ anti-corruption mechanisms.¹⁸ The Commission does not have enforcement powers, except with regard to its own members.¹⁹

¹⁴ S. 149 – 162.

¹⁵ S.149, particularly 149(2)(h)(i)(j)(k).

¹⁶ In the Updated Response to the Questionnaire, the Government writes that, “The Government has... drafted a Prevention of Corruption (Amendment) Bill.... The Prevention of Corruption (Amendment) Bill was laid in Parliament but lapsed upon the dissolution of Parliament in October, 2001. The Government of Trinidad and Tobago is in the process of retooling and refining its National Anti-Corruption Strategy.” p. 33.

¹⁷ S. 5(1)(e) of the Integrity in Public Life Act.

¹⁸ S. (5)(1)(g) and (h).

¹⁹ S. 17(1)(a)

The Integrity Commission may receive complaints from any member of the public.²⁰ The Integrity in Public Life Act requires the Commission to report any breach of its Code of Conduct to the appropriate Service Commission,²¹ Board or other Authority, “setting out such details and particulars as it sees fit”.²² The appropriate Service Commission would be that Commission which enforces disciplinary rules for the employee who may be in breach. Service Commissions may take whatever disciplinary action they deem appropriate – in accordance with their own internal regulations – in relation to a report from the Integrity Commission.²³ In addition to this, the Integrity Commission is required to report to the Director of Public Prosecutions an offence that it believes may have been committed after it has conducted an investigation into a breach of any part of the Act. The Director of Public Prosecutions may then “take such action as he thinks appropriate”.²⁴

- The Constitution gives to the Public Service Commission, the Police Service Commission, and the Teaching Service Commission the power to enforce “standards of conduct” that fall under the ambit of those Commissions.²⁵
- The Public Service Commission has disciplinary authority over public officers who breach their employer’s code of conduct, including the code in the Integrity in Public Life Act.²⁶ Disciplinary options are listed in section 110(1) of the Public Service Commission Regulations and may be imposed during and after an investigation taken by a Permanent Secretary or Department Head. According to the Constitution, the Public Service Commission’s enforcement powers “applies to all public offices including in particular offices in the Civil Service, the Fire Service and the Prison Service, and to the offices in the Tobago House of Assembly, but this section does not apply to offices filled with appointments made by the Judicial and Legal Service Commission, the Police Service Commission or the Teaching Service Commission or offices to which appointments are to be made by the President.”²⁷ Section 109 of the Public Service Commission (Amendment) Regulations requires that proceedings before an investigatory tribunal appointed by the Commission under section 95 be held in private.
- Section 163 of the Police Service (Amendment) Regulations contains a code of conduct that subjects any police officer who commits an act of misconduct to the disciplinary provisions of 104(1) of the Police Service Commission Regulations.²⁸ There are also provisions establishing a Police Service Commission which can perform investigations and appoint a tribunal.²⁹ This code of conduct is monitored by the police officers in the First Division, from Superintendents to the Commissioner of Police.³⁰ The Police Service Commission³¹ is a quasi-judicial body that can act

²⁰ S. 32.

²¹ A Service Commission is defined in Section 3 of the Constitution of the Republic of Trinidad and Tobago as the Judicial and Legal Service Commission, the Public Service Commission, the Police Service Commission or the Teaching Service Commission.

²² S. 31.

²³ S. 31(2).

²⁴ S. 34(5).

²⁵ Sections 121, 123 and 125 of the Constitution.

²⁶ S. 84 of the Public Service Commission Regulations.

²⁷ Sections 121(1) and 121(7) of the Constitution.

²⁸ Penalties under R. 104(1) include dismissal, reduction in office, reduction of remuneration, deferment of increment, stoppage of increment, transfer, fine, and reprimand.

²⁹ *Report of the Police Service Commission 1995-1998* (Extract).

³⁰ Trinidad and Tobago’s Response to the Questionnaire, p. 21

on allegations of corruption when they are brought to its attention by the Manager of the Police Service, or the Commissioner of Police. In accordance with Section 122 of the Constitution of the Republic of Trinidad and Tobago, it is composed of four members and a Chairman. The Chairman is either the Chairman or deputy Chairman of the Public Service Commission. The members will be appointed by the President after consulting with the Prime Minister and the Leader of the Opposition. It has the power to dismiss Police Officers who have been judged by a court of law to have committed a criminal offence. Also, the Commission can exonerate an officer or impose a penalty after a hearing of the evidence by a Standing Disciplinary Tribunal. A defendant has a right to be represented by a lawyer, and may appeal a disciplinary decision against him by the Tribunal or Commission to the Public Service Appeal Board, in accordance with 132(1) of the Constitution.

For minor acts of misconduct, the Police Service Commission has delegated authority to Police Officers in the First Division, from Superintendents to the Commissioner, to investigate and discipline Police Officers in the Second Division. Each of these Officers may serve as a one-person tribunal in the investigation, hearing and determination of misconduct. These hearings and determinations are conducted outside the presence of counsel, although representatives of the Staff Association, who also happen to be attorneys, are usually present. An officer may appeal a decision against him by a tribunal to the Public Service Appeal Board.³²

- There are also Commissions of Enquiry appointed on an ad hoc basis by the President under the Commissions of Enquiry Act. Commissions of Enquiry can be created by the President to carry out anticorruption investigations into “the conduct or management of any department of the public service or of any public or local institution, or into any matter in which an enquiry would, in the opinion of the President, be for the public welfare.”³³ The member(s) are appointed by the President and report to him.³⁴ The manner and rules under which a Commission of Enquiry conducts an investigation are set by the Commission.³⁵ The members of the Commission are unpaid, unless voted a salary by Parliament,³⁶ and they have powers to call for the production of documents and to examine witnesses and parties. The enquiry shall be public “in the absence of any direction to the contrary.”³⁷ Proceedings for penalties may be commenced only at the direction of the Director of Public Prosecutions or of the Commissioners. The Commissioners may delegate this authority to their secretary or other person as they see fit.³⁸

³¹ Information for this part of the section that deals with the Police Service Commission comes from a 1995-1998 report of the Police Service Commission.

³² Report of the Police Service Commission, 1995-1998.

³³ S. 2 of the Commissions of Enquiry Act.

³⁴ S. 7 of the Commissions of Enquiry Act.

³⁵ S. 2 and S. 9 of the Commissions of Enquiry Act.

³⁶ S. 14 of the Commissions of Enquiry Act.

³⁷ S. 2 of the Commissions of Enquiry Act.

³⁸ S. 16 of the Commissions of Enquiry Act.

- The Ombudsman has broad investigatory powers as laid out in Chapter 6 Part II of the Constitution of the Republic of Trinidad and Tobago. Section 93(2) of the Constitution of the Republic of Trinidad and Tobago provides that the Ombudsman can respond to complaints by any person alleging administrative injustice,³⁹ and can also undertake investigations on his own initiative.⁴⁰ It is not his function, however, to “undertake any investigation against specific charges of corruption against individuals.”⁴¹
- In its response, the Government writes that “Regulation 149 of the Code of Conduct for civil servants set out in the Civil Service (Amendment) Regulations 1996, provides that an officer who contravenes any of the regulations commits an act of misconduct.”⁴²
- Section 6 of the Prevention of Corruption Act provides for penalties of a maximum fine of TT \$500,000 and ten years imprisonment for any person found by a court to be in violation of the Act. In addition, a person convicted under the Act shall be ordered by the court to reimburse the defrauded public body “the amount or value of any gift, loan, fee, or reward received by him.” This section also requires that “such a person ... be adjudged forever incapable of being elected or appointed as a member of a public body or of holding any other public office and shall forfeit any such office held by him at the time of his conviction.” In addition, upon a second conviction, such a person shall be prohibited from being registered as an elector and in voting in any election for public office. Furthermore, such a person may, at the discretion of the court, be ordered to forfeit any claim to compensation or pension to which he otherwise would be entitled. Under section 11, enforcement of any provision of the Act cannot occur except with the consent of the Director of Public Prosecutions.
- In its response the Government writes that “The Code of Ethics for Parliamentarians including Ministers provides in rule 13 that there should be established in each House of Parliament a Standing Ethics Committee empowered to *inter alia* ‘receive, investigate and report upon any complaints of departures by Members from the Code of Ethics, and in particular, upon allegations involving conflict of interest’.” There is at this time established a Standing Ethics Committee that recently has been involved in carrying out the above functions.

1.1.2 Adequacy of the legal framework and/or other measures and enforcement mechanisms.

The rules and mechanisms on conflicts of interest, on the basis of the information sent by the government, are relevant for promoting the objectives of the Convention. However, the Committee feels it is appropriate to express a number of comments with respect to some aspects of these rules and mechanisms. The Committee will also formulate recommendations in this regard in the final chapter of this report.

³⁹ The Constitution of Trinidad and Tobago, Section 93(2)(a).

⁴⁰ *Id.*, Art. 93(2)(c).

⁴¹ *Id.*, Art. 94(2).

⁴² See response of the Republic of Trinidad and Tobago, p. 7.

The Committee notes that provision is made within the Trinidadian legal framework, via the Constitution, for a system of incompatibilities, disqualifications and prohibitions in the public service. The Constitution contains a number of general and specific provisions for the correct, honorable and proper fulfillment of public functions that encompass the principles established in the Convention. The Committee believes that this indicates progress in implementing the Convention.

With regard to constitutional as well as statutory provisions relating to the investigation and discipline of judges and people performing judicial functions, these provisions could be developed, and the enforcement powers of the Judicial and Legal Service Commission and the Public Service Commission expanded.

In its 2001 Annual Report, the Integrity Commission concluded that the Integrity in Public Life Act as it is now written conflicts with 136(6) of the Constitution, and therefore the Commission has not enforced the provisions of the Act in respect of judges. It would be consistent with the purpose of the Convention to remove this conflict. The Committee will formulate a recommendation in this respect.

The President is the only public official who may remove judges, and can only do so on the advice of the Judicial and Legal Service Commission or the Judicial Committee, following the procedure laid out in Section 137 of the Constitution.

Elsewhere in the Constitution, however, there are rules for investigating and removing judges for misbehaviour. The term 'misbehaviour' is used in Section 137(1), but is not defined. The Republic of Trinidad and Tobago may wish to consider the usefulness of defining in a code of conduct for judicial officers what actions or omissions would constitute misbehaviour. The Committee will formulate a recommendation in this respect.

The Constitutional provisions for removal of a judge may benefit from being complemented by provisions for sanctioning a judge with a lesser penalty than removal, such as a fine or temporary suspension from office – this in addition to the temporary suspension that may now be imposed by the President only during an investigation. The Committee will formulate a recommendation in this respect.

Section 121(7) of the Constitution restricts the Public Service Commission from taking disciplinary measures against appointees of the Judicial and Legal Service Commission. This means that the Public Service Commission cannot enforce the Code of Conduct in the Integrity in Public Life Act against Masters, Magistrates and all other legal officers. The Committee believes it would be helpful for the purposes of the Convention to ensure that specific codes of conduct for officials appointed by the Judicial and Legal Service Commission are in place that would guarantee measures to create, maintain, and strengthen standards of conduct for the correct, honorable, and proper fulfillment of public functions, in addition to mechanisms to enforce these standards of conduct. The Committee will formulate a recommendation in this respect.

To the extent that codes of conduct are not in place that apply to judges and other judicial officials appointed by the Judicial and Legal Service Commission, consideration should be given to the possibility of including aspects such as the creation of a specific code of conduct for judicial officials appointed by the Judicial and Legal Service Commission, a code of conduct that would guarantee the measures to create, maintain, and strengthen standards of conduct for the correct, honorable, and proper fulfillment of public functions, in addition to mechanisms to enforce these standards of conduct, as established in Paragraphs 1 and 2 of Article III of the Convention. The Committee will formulate a recommendation in this respect.

Section 111(1) of the Public Service Commission Regulations, prohibits the Public Service Commission from taking administrative proceedings against an officer where criminal proceedings have been brought against him; given that prosecutions by the Director of Public Prosecutions take an “average of seven years to trial”⁴³, this might obstruct the functioning of the Public Service Commission, and perhaps other Service Commissions with provisions similar to 111(1). (For instance, a Commission of Enquiry created under section 15 of the Integrity in Public Life Act is subject to similar limitations.) The Public Service Commission is allowed to order the officer under investigation to “forthwith cease to perform the functions of his office” if criminal proceedings have been instituted. However, the Public Service Commission is not allowed to lower the civil servants’ salary below half its normal amount while these potentially lengthy criminal proceedings are taking place. The Committee believes that it may be useful towards fulfilling the purpose of the Convention to create a mechanism that would allow the Service Commissions to hold administrative hearings and dismiss public servants based on a finding of involvement in corrupt activity independent of whether proceedings are taken against the public servant in any Court. The Committee will formulate a recommendation in this respect.

More broadly, the Committee is concerned that the investigative and disciplinary rules for Service Commissions in general may in practice take an excessive amount of time. Transparency International reports that “the disciplinary processes of the Service Commissions are excessively lengthy and often reach no satisfactory conclusion. Proceedings are often spun out by adjournments which can sometimes number as many as thirty.”⁴⁴ The Committee will make a recommendation in this regard.

The Integrity in Public Life Act ensures the independent nature of the Integrity Commission at section 5(2)(a) where it states that the Integrity Commission “shall not be subject to the direction or control of any other person or authority.”⁴⁵ However, the independence of the Commission could be threatened by section 8(2), which permits the President to remove its members for misbehaviour.⁴⁶ The term ‘misbehaviour’ is not defined in Part I of the Act. The Committee is concerned that this may be interpreted to mean a broad range of behavior that was not the intended meaning of the word. This potential problem could be avoided by precisely defining ‘misbehaviour’. The Committee will formulate a recommendation in this respect.

⁴³ Address of the Honorable Chief Justice Michael de la Bastide, September 1999, p. 16. http://www.ttlawcourts.org/cj_address/cj_speech_99-00.pdf

⁴⁴ Report of the Trinidad and Tobago Transparency Institute, p. 3.

⁴⁵ S. 5(2)(a).

⁴⁶ The President may remove a member of any Service Commission, other than the Judicial and Legal Service Commission, for any reason according to Section 126(4) of the Constitution of the Republic of Trinidad and Tobago.

Section 9(2) helps to ensure that the Integrity in Public Life Act is properly funded; it states that “the Commission shall be provided with adequate staff for the prompt and efficient discharge of its functions under the Act”. Two recent annual reports⁴⁷ from the Integrity Commission, however, indicate that the Commission does not have enough resources to perform its functions. The Committee will formulate a recommendation in this respect.

The Committee notes that there are provisions at section 5(1)(h) and (i) in the Integrity in Public Life Act that provide for informing and training public servants on the standards designed to prevent conflicts of interest. It might be helpful to ensure that the Integrity Commission has a system to train, inform and respond to requests for advice by public servants. Also, after public servants undergo such training it may be useful for the purposes of the Convention to require them to sign an agreement that they will abide by the Code of Conduct. The Committee will formulate recommendations in this respect.

The Republic of Trinidad and Tobago may wish to ensure that the provisions of the Integrity in Public Life Act are sufficient to cover conflicts of interest that may arise in all branches of government, such as customs, tax collection, public accounting, purchases and hiring, etc. It may be desirable to enact specific regulations for this purpose. The Committee will formulate a recommendation in this respect.

There are a few other Codes and Regulations mentioned by the Government in its Response to the Questionnaire: the Civil Service (Amendment) Regulations; the Police Service Commission Regulations; the proposed Code of Ethics for Parliamentarians including Ministers. The Committee notes that there are no provisions in the Civil Service Regulations or in the Civil Service (Amendment) Regulations, referring specifically to the detection and/or prevention of conflicts of interest. In this regard, the Committee will formulate a recommendation.

The system used by the Police Service Commission that entails delegating to individuals the power of a tribunal was designed to streamline the disciplinary process. However, there have been problems with individuals not following the proper procedure or failing to ensure a fair hearing for officers. Often witnesses do not show up, or an excessive number of adjournments are called for by police officers, and allegations of misconduct are not thoroughly investigated by Investigating Officers.⁴⁸ Frequently, cases take one or two years to reach a disposition.⁴⁹ In addition, with regard to the functioning of the Police Service Commission, the Committee notes that Transparency International writes, “delays in the work of the Police Service Commission have been partly due to lack of resources. The Commission has no budget.”⁵⁰ The Committee will formulate a recommendation in this regard.

⁴⁷ Fourteenth Annual Report to Parliament by The Integrity Commission for Trinidad and Tobago, 2001, section 3.2. Also, Fifteenth Annual Report to Parliament by The Integrity Commission for Trinidad and Tobago, 2002, sections 2.1 and 2.2.

⁴⁸ Report of the Police Service Commission, 2002, section 10.0

⁴⁹ Report of the Police Service Commission, 1995-1998, First Schedule, Part V.

⁵⁰ Report of the Trinidad and Tobago Transparency Institute, p. 3.

With regard to the Ombudsman, many of the powers granted to this office in the Constitution are useful towards meeting the goals of the Convention. Under Section 93 of the Constitution of Trinidad and Tobago the Ombudsman is empowered to investigate any matter relating to alleged injustices resulting from faults in Government administration upon complaint being made by any member of the public, at the request of a member of the House of Representatives, or on his/her own initiative. However, it should be noted that though the powers of the Ombudsman may extend to complaints, which raise questions as to integrity or corruption in the public service, such powers do not extend to the investigation of specific charges of corruption against individuals. Where a complaint raises a question of corruption the Ombudsman is required to report the matter to the appropriate authority with a recommendation as to any further investigation he/she may consider proper. The Ombudsman, however may investigate any conditions resulting from or calculated to facilitate or encourage corruption within the public service. Section 98(2), however, restricts the Ombudsman's investigatory powers by prohibiting the Ombudsman from summoning "a Minister or a Parliamentary Secretary to appear before him or to compel a Minister or a Parliamentary Secretary to answer any questions relating to any matter under investigation by the Ombudsman." The Committee is concerned that this prohibition may inhibit investigations at high levels.

The proposed Code of Ethics for Parliamentarians including Ministers was binding on the Parliament that passed it in 1987, but was never signed into force by the President.⁵¹ What is contained in this legislation is now covered by more comprehensive conflict of interest legislation that is now in force. However, given that the Code of Conduct in the Integrity in Public Life Act cannot be enforced by the Public Service Commission on some members of Parliament, and the Ombudsman cannot directly investigate certain high officials, the Committee considers that it may be useful to the purposes of the Convention to reinstate an updated and more comprehensive proposed Code of Ethics for Parliamentarians including Ministers, perhaps incorporating many parts of the Code of Conduct in the Integrity in Public Life Act. Additionally, the Committee notes that this Code lacks enforcement provisions. The Committee will formulate a recommendation in this respect.

The Committee also notes a lack of measures when it comes to those activities performed by public servants once they no longer exercise their public functions. The Committee believes it would be appropriate to adopt related provisions such as prohibiting public servants from participating in entities in which they were recently involved by virtue of their public employment; in general, the Committee believes it is important to take preventative measures against situations that could lead to ex-civil servants taking undue advantage of their former position. The Committee wishes to highlight the appropriateness of developing measures that, for example, limit or prohibit the holding of administrative or management posts in private institutions subject to the control or regulation of the state by individuals that have exercised a certain level of public jurisdiction in the respective oversight or regulating organization. This prohibition should cover a reasonable period of time

⁵¹ In the Appendix of the report of the Law Commission of Trinidad and Tobago entitled *Strengthening Trinidad and Tobago's Anti-Corruption Legislation*, the following explanation is given: "The first attempt to introduce a Code of Conduct in Trinidad and Tobago was made in 1987 when a "Code of Ethics for Parliamentarians including Ministers" was laid in both Houses of Parliament of Trinidad and Tobago. This Code, however, applied only to members of Parliament and was introduced as a Parliamentary document without the force of law to enforce it and to give it longevity. As such, the Code was only binding on the Parliament of the time. It was also proposed that a Select Committee of Parliament would deal with breaches of the Code and report to Parliament, as occurred in the British Parliament. This raised concerns about the lack of external and independent monitoring of members of Parliament. Consequently, it does not appear that the Code has ever been enforced."

following the departure of the civil servant, while at the same time respecting the right to work enshrined in Article XIV of the American Declaration on the Rights and Duties of Man. The Committee will formulate a recommendation in this respect.

1.1.3 Results of the legal framework and/or other measures and enforcement mechanisms.

In its Response to the Questionnaire, the Republic of Trinidad and Tobago reports that “Information relating specifically to the implementation of conflict of interests legislation is not available. It should be pointed out that the Integrity in Public Life Act which contains the Code of Conduct was only enacted in late 2000 and more time is needed for full implementation and analysis of the results.”⁵²

The Integrity Commission reports that: it has held meetings with other Government Agencies in order to let those agencies know the new mandate of the Commission and how it may request assistance from those Agencies;⁵³ it is preparing to carry out public education programs in order to make people aware of the new standards of integrity;⁵⁴ it has been active in monitoring a number of investigations into corruption conducted by other state agencies;⁵⁵ and it is developing a “Code of Institutional and Corporate Governance.”⁵⁶

In order to better evaluate the effectiveness of the Prevention of Corruption Act, it would be useful for the Republic of Trinidad and Tobago to collect information relevant to its enforcement, such as statistics on compliance and the number of charges and convictions brought under the Act by the Director of Public Prosecutions. The Committee will make a general recommendation in this respect.

The government reports in its Updated Response to the Questionnaire the following information on allegations of misconduct and disciplinary activity against police officers:

“The Report of the Police Service Commission for the Year 2000 indicates that for that year there were 26 allegations of misconduct made against police officers, while 58 Disciplinary Charges were preferred against police officers, and 43 police officers were brought before the Court to face criminal charges. The statistics do not give specifics as to the nature of the charges against the police officers nor do they indicate as to how many charges relate to corrupt practices.

“A later Report of the Police Service Commission for the year 2001 shows that a total of 22 allegations of misconduct were made against police officers for that year, with 60 Disciplinary Charges being preferred against officers and a total of 33 police officers were charge and brought before the Court.

“The figures contained in the 2002 Report of the Police Service Commission show a total of 44 Disciplinary Charges being brought against officers, with 28 officers being charged before the Courts, and only one allegation of misconduct being made for that year. Information on the specific nature of the allegations or charges was not available.”

⁵² Trinidad and Tobago’s response to the questionnaire, p. 12.

⁵³ Annual Report of the Integrity Commission for Trinidad and Tobago, Year 2001, p.8.

⁵⁴ *Id.*, p.9.

⁵⁵ *Id.*, p.3.

⁵⁶ *Id.*, p 4.

The Committee considers that it would be beneficial for the Republic of Trinidad and Tobago to collect specific information regarding the functioning of the Police Service Commission, such as statistics on the types of charges that the Commission has issued for acts of corruption or for the conduct and measures referred to the questionnaire, with the aim of assessing the effectiveness of the Police Service Commission. The Committee will make a general recommendation in this respect.

For the purpose of evaluating the functioning of the proposed Code of Ethics for Parliamentarians including Ministers, once it comes into force it would be useful for the Republic of Trinidad and Tobago to collect information concerning its enforcement, such as statistics on the complaints received by and investigations performed by the Standing Ethics Committee for each House of Parliament. The Committee will make a general recommendation in this respect.

In order to better evaluate the functioning of the Judicial and Legal Service Commission and the Judicial Committee, it would be useful for the Republic of Trinidad and Tobago to collect information relevant to their enforcement, such as statistics on the requests for removal from office that they have made to the President of the Republic, and the actual removals effected. The Committee will make a general recommendation in this respect.

The general nature of the information provided does not allow the Committee to analyze comprehensively the results in this field. Taking into account this circumstance, the Committee will formulate a recommendation.

1.2 STANDARDS OF CONDUCT AND MECHANISMS TO ENSURE THE PROPER CONSERVATION AND USE OF RESOURCES ENTRUSTED TO GOVERNMENT OFFICIALS

1.2.1 Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

The legal apparatus that the Republic of Trinidad and Tobago uses to address the issue of proper conservation and use of resources are found in the following acts:

- The Constitution of the Republic of Trinidad and Tobago provides that there shall be an Auditor General.⁵⁷ The office and functions of the Auditor General are provided for in Section 117 of the Constitution of the Republic of Trinidad and Tobago. The Exchequer and Audit Act, Chapter 69:01, gives responsibility to the Auditor General for overseeing and auditing all state accounts⁵⁸ and reporting to the Treasury any irregularities he may find.⁵⁹ The Exchequer and Audit Act requires a public accounting in accordance with S. 24, Chapter 69.01. In this report, there is detailed a list of state property that is missing at the end of each year. Under 119(5) of the Constitution, there is a Public Accounts (Enterprises) Committee that reports to the House of Representatives on the report of the Auditor General. Under Section 119(1) there exists a Public Accounts Committee that reports to the House of Representatives on the report of the Auditor General on “appropriation accounts of moneys expended out of sums granted by Parliament to meet the public expenditure of Trinidad and Tobago.” Section 9(1) states that “The Auditor General shall examine, inquire into and audit the accounts of all accounting officers and receivers

⁵⁷ S. 116.

⁵⁸ S.9 (1), S.9(2).

⁵⁹ S. 26.

of revenue and all persons entrusted with the assessment of, collection, receipt, custody, issue or payment of public moneys, or with the receipt, custody, issue, sale, transfer or delivery of any stamps, securities, stores or other State property. Section 9(2) states that “The Auditor General shall satisfy himself that- (d) essential records are maintained and the rules and procedures framed and applied are sufficient to safeguard the control of stores and other State property.” And section 26 states that “If at any time it appears to the Auditor General that any irregularities have occurred in the receipt, custody or expenditure of public moneys or in the receipt, custody, issue, sale, transfer or delivery of any stamps, securities, stores or other State property, or in the accounting for the same, he shall immediately bring the matter to the notice of the Treasury.”

- Part IV of the Integrity in Public Life Act in its Code of Conduct. Section 24(1) of the Act reads “ A person to whom this Part applies shall ensure that he performs his functions and administers the public resources for which he is responsible in an effective and efficient manner...” Section 24(2)(c) reads that a person to whom this Part applies shall not “use public property or services for activities not related to his official work...” It bears repeating that these provisions have a very wide application, as all persons exercising public functions and all persons in public life fall within their reach.
- The Code of Conduct for civil servants contained in the Civil Service (Amendment) Regulations. Rule 149 (2) reads “...an officer who-
 - (i) uses, without the authority of the Permanent Secretary or Head of Department any property or facilities provided for the purposes of the Service, for a purpose not connected with that officer’s official duties...commits an act of misconduct.”
- The Police Service (Amendment) Regulations, 1990. Rule 163(2) reads that “...a police officer commits an offence against discipline and is liable to such punishment as is prescribed by regulation 104(1) of the Police Service Commission Regulations if he is guilty of any of the following offences:
 - (s) Using any property or facilities of the State without the consent given personally of the Commissioner for some purpose not connected with his official duties.”
- The proposed Code of Ethics for Parliamentarians including Ministers.⁶⁰ Rule 11 of the Code reads “A parliamentarian should be scrupulous in his use of public (official) property and services and should not permit their misuse by other persons.”

The enforcement mechanisms regarding conflicts of interest described and analyzed in sections 1.1.1, and 1.1.2. of this report are for the most part the same enforcement mechanisms that apply to the standards of conduct for the proper use of resources entrusted to public officials. This is because the enforcement mechanism that applies to provisions in one Code of Conduct or Act, generally apply to other provisions within the same Code of Conduct or Act. For example, violations of the conflict of interest provisions in the Code of Conduct of the Integrity in Public Life Act may be investigated by the Integrity Commission and prosecuted by the Director of Public Prosecutions, and disciplinary actions may be taken by the department to which the employee belongs or by the Public Service Commission; this procedure is the same for violations of provisions in the Code relating to conservation of public resources.

⁶⁰ Rule 11.

There are, however, a couple of additions to enforcement mechanisms in this section. The Exchequer and Audit Act contains a relevant enforcement provision at section 27(1). This provision gives “the Minister” (presumably the Minister of Finance as referred to in 116(4) of the Constitution) the power to surcharge anyone who has been responsible for any “deficiency in or the destruction of any public moneys, stamps, securities, stores or other State property.”⁶¹ Procedures are laid out for the recovery of the value of the loss.⁶²

Section 35(1) in the Integrity in Public Life Act, which is not a part of the Code of Conduct but still applies to persons exercising public functions and persons in public life, is given additional enforcement by Section 35(2) which provides that a member of the Commission who makes an unauthorized disclosure of information will be “liable on summary conviction to a fine of two hundred and fifty thousand [TT] dollars and to imprisonment for five years.”

In addition to the normal enforcement mechanism applicable to violations of rules in the Police Service (Amendment) Regulations, section 151(2) also provides that “any officer who contravenes any of the provisions in any written law relating to official secrets is guilty of an offence notwithstanding that he may be charged with an offence under any such written law.”

As mentioned earlier, the Code of Ethics for Parliamentarians including Ministers is not in force.

1.2.2 Adequacy of the legal framework and/or other measures and enforcement mechanisms

The standards and mechanisms for conservation and proper use of public resources that have been reviewed so far, based on the information sent by the government, are relevant for the promotion of the purposes of the Convention.

1.2.3 Results of the legal framework and/or other measures and enforcement mechanisms

In the Report of the Auditor General of 1999-2000, the Government keeps a comprehensive accounting of thefts from Government Ministries and Departments. However, based on the portion of this report that the Committee has at its disposal, and given that there is no more recent information, it is difficult to undertake a comprehensive analysis of the effectiveness of the above mechanisms. Also, in its response, the Government writes that “no results are available with respect to the implementation of the other statutory instruments mentioned.” The Republic of Trinidad and Tobago may benefit from implementing an analysis of the use and effectiveness of standards of conduct for ensuring the conservation and proper use of public resources, and relevant enforcement standards. The Committee will formulate a recommendation in this respect.

⁶¹ S. 27(1)(c).

⁶² S. 24(1).

1.3 MEASURES AND SYSTEMS REQUIRING PUBLIC OFFICIALS TO REPORT TO APPROPRIATE AUTHORITIES ACTS OF CORRUPTION IN THE PERFORMANCE OF PUBLIC FUNCTIONS OF WHICH THEY ARE AWARE

1.3.1. Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

In its response, the country under review expressly states “public officials are not required under any standards of conduct to report acts of corruption in public office to appropriate authorities. The Integrity in Public Life Act makes it voluntary rather than obligatory for any member of the public, not just public officials, to report acts of corruption.”⁶³ The provision referred to is section 32(1) which states that a member of the public may complain about a violation of the Act in writing to the Integrity Commission.

In addition, the government mentions the Commissions of Enquiry that the President may form under the Commissions of Enquiry Act, and quotes section 2 of the Act as follows: “The President may whenever he deems it advisable, issue a commission appointing one or more commissioners, and authorising such commissioners, or any quorum of them therein mentioned, to enquire into the conduct of any officer in the public service in the Republic of Trinidad and Tobago, the conduct or management of any department of the public service or of any public or local institution, or into any matter in which an enquiry would, in the opinion of the President, be for the public welfare. Each such commission shall specify the subject of the enquiry...”

Commissions of Enquiry have been used in a number of recent anticorruption investigations. The government points out in its response that these Commissions can be used to require public officials to report acts of corruption because the Commissions have the power of a High Court to summon and compel witnesses to testify, as well as require the production of various documents.

Furthermore, the government describes proposed legislation, such as amendments to the Prevention of Corruption Act, that would impose greater protections for whistleblowers, particularly against workplace reprisals, which might thereby encourage public officials to report acts of corruption.⁶⁴

In addition to the mechanisms mentioned in the government’s response section 52 of the Proceeds of Crime Act states the following: “(1) A person is guilty of an offence if –

- (a) he knows or suspects that another person is engaged in money laundering;
- (b) the information or other matter on which that knowledge or suspicion is based came to his attention in the course of his trade profession business or employment; and
- (c) he does not disclose the information or other matter to a police officer as soon as is reasonably practicable after it comes to his attention.”

Subsection (3) of section 52 states: “it is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.”

⁶³ Trinidad and Tobago’s response to the questionnaire, p 14.

⁶⁴ Trinidad and Tobago’s response to the questionnaire, p. 15-16. Also, in the Updated Response to the Questionnaire, the Government writes that, “The Government has... drafted a Prevention of Corruption (Amendment) Bill... which intends *inter alia* to provide protection for informers or whistleblowers.

Section 54 specifies particular provisions, among them section 52, within the Proceeds of Crime Act that can be applied to public servants,

1.3.2 Adequacy of the legal framework and/or other measures

The Committee notes that the Republic of Trinidad and Tobago has in place several mechanisms that require or encourage public officials to report acts of corruption after a formal process has been commenced. The Committee believes that this is a step towards fulfilling the purposes of Article III of the Convention. This process includes a suspicion of corrupt activity great enough to get an investigation underway, and such an investigation would then need to be conducted thoroughly enough to find a public official who has some knowledge of the corruption and can then be required to reveal that knowledge.

A more direct reporting requirement would help ensure that the government becomes aware of possible acts of corruption more quickly than through an investigation. It may be appropriate to incorporate such a requirement into one of the pieces of legislation mentioned in the response of the government, such as the Integrity in Public Life Act, expressly requiring public officials to report any acts of corruption of which they become aware, and making the corresponding Commission responsible for training. The Committee will formulate a recommendation in this respect.

The Committee believes that it would be appropriate for the Republic of Trinidad and Tobago to consider including provisions to protect whistleblowers who report acts of corruption from threats and acts of retaliation by, for example, maintaining anonymous or confidential the identity of the person reporting. The Committee, noting that the Government in its response indicates that it is considering such legislation, will formulate a recommendation in this respect.

Section 52 of the Proceeds of Crime Act, to the extent that it can be applied to public servants, meets the aims of the Convention's reporting requirements regarding the corrupt act of money laundering by requiring persons to report to police officers acts of money laundering of which they become aware while performing their official duties. However, the Committee believes that subsection 3 may weaken this requirement by allowing anyone with a reasonable excuse to escape the requirement of subsection 1.

1.3.3 Results of the legal framework and/or other measures

The Committee notes that the government in its response points out several investigations that have been carried out and completed under the guidance of a Commission of Enquiry. Commissions of Enquiry have completed investigations into allegations of corruption against Justices of the Peace, as well as into the Administration of Justice in Trinidad and Tobago, the operations of the Elections and Boundaries Commission, the construction of the Biche High School and the construction of the new Piarco Airport Terminal.⁶⁵

⁶⁵ Updated Response to the Questionnaire, p. 32.

The Committee does not have the results of these investigations at its disposal. In so far as results in this area may be represented by indictments or successfully completed prosecutions, the Committee lacks sufficient information to perform an analysis. However, the government in its Updated Response to the Questionnaire writes that “these Reports are at present engaging the attention of the relevant Authorities. Persons are presently before the Courts charged with offences related to the construction of the new Piarco Airport Terminal in Trinidad and Tobago.”⁶⁶

This lack of information makes it impossible to fully assess results in this field. In light of this circumstance, the Committee will make a recommendation.

2. SYSTEMS FOR REGISTERING INCOME, ASSETS, AND LIABILITIES (ARTICLE III, PARAGRAPH 4 OF THE CONVENTION)

2.1 Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

Chapter 10, Sections 138 and 139 of the Constitution of the Republic of Trinidad and Tobago authorizes the Integrity Commission to receive and monitor declarations of assets, liabilities and income from persons in public life.

There are extensive rules and procedures for declarations of income, assets, and liabilities found in Part III the Integrity in Public Life Act that apply to persons in public life.⁶⁷ Such persons are required by section 11 to file with the Integrity Commission “a declaration of his income, assets and liabilities in respect of the previous year and, thereafter, on May 31st in each succeeding year that he is a person in public life...”, as well as a year after ceasing to be a person in public life. In addition, section 12(1) requires him to include “such particulars as are known to the declarant, of the income, assets and liabilities of himself, his spouse and his dependent children.”

Section 13 gives the Integrity Commission powers to investigate declarations of financial interests by persons in public life.⁶⁸ Under section 15, if the Commission wants to investigate beyond the limitations of section 13, and the President appoints a tribunal at the Commission’s request, then section 16(2) gives this tribunal the powers of a Commission of Enquiry, except that its proceedings are private.

Section 12(5) guards against illicit enrichment. It provides that “where in a declaration filed with the Commission, a person in public life discloses an income which is insufficient to support the accretion in value of the net assets disclosed so as to raise the inference that there must have been other income to account for the extent of the acquisition of such assets, the person in public life will be deemed to have been in possession of such income which has not been disclosed and the onus shall be on him to establish the source of that further income.”

Section 14 requires persons in public life to furnish a public statement of registrable interests which include: directorships; State contracts; investments; trusts; interests in land; political, trade or professional associations to which the person belongs; particulars relating to sources of income; and any private interest that may be in conflict with his public duty. Section 14(5) states that actual amounts or extent of financial benefits, contributions or interests are not required under the Act.

⁶⁶ Updated Response to the Questionnaire, p. 32.

⁶⁷ See Part III of the Act.

⁶⁸ S. 13 and S. 34.

If a person in public life fails to comply with the requirements of sections 11, 13, or 14 the Integrity Commission must publish this fact in the *Gazette*, the official government publication which is circulated through all Government departments, and in at least one daily newspaper. After publication, section 11(7) permits the Commission to “make an ex parte application to the High Court for an order directing the person in public life to comply with the Act and the Court may in addition to making such an order, impose such conditions as it thinks fit.” If the court order is not complied with, section 11(8) imposes a fine of one hundred and fifty thousand TT dollars on the offender. Section 21(1) provides a second enforcement provision for the same violation of failure to submit a declaration, or making a false declaration to the Commission, or refusal to comply with the order of a tribunal or the Commission, in the form of a fine of two hundred and fifty thousand TT dollars and imprisonment for a term of ten years. Section 21(1) allows these penalties to be imposed upon summary conviction.⁶⁹ There are also forfeiture provisions in sections 21(2)(a) and (b) for property that a declarant deliberately keeps secret from the Commission. The value of such property is paid to the State.

Section 22(1) also states that where a conflict of interest appears to have arisen, the Commission shall order the person in public life to place his assets in a blind trust and to file a copy of the trust deed with the Commission

Section 41(2) of the Integrity in Public Life Act requires any regulations made by the Integrity Commission under section 41(1) to be subject to the affirmative resolution of Parliament. Such regulations include “the form of declaration to be submitted and any additional forms which have been prescribed or which may become necessary,” as well as procedures for carrying out enquiries.

A different set of rules that are found in the Code of Conduct in the Integrity in Public Life Act apply to some of the public officials within the category of persons exercising public functions.⁷⁰ Section 30 provides as follows: “A person holding office⁷¹ under the Public Service, Judicial and Legal Service, Police Service, Teaching Service or Statutory Authorities’ Service Commission, shall upon his appointment, and from time to time as may be required, declare to the appropriate Commission in such form as may be prescribed – all business, commercial and financial interests and activities in which he is engaged; and all personal property, assets and liabilities in respect of himself, his spouse and dependent children provided that all information so given shall be treated as confidential.”⁷² This provision has the same enforcement mechanisms as other provisions in the Code of Conduct contained in the Integrity in Public Life Act, as described in section 1.1.1.

⁶⁹ A summary trial is simply a non-jury trial, i.e., a trial in which the judge is the trier of fact. Therefore, a summary conviction is simply a conviction resulting from a summary trial.

⁷⁰ See S. 30 of the Act.

⁷¹ “A person holding office....” would appear to include all employees in the Services and Commissions mentioned in article 30, because S. 3 of the Constitution of Trinidad and Tobago defines a public office as “an office of emolument in the public service”.

⁷² Integrity in Public Life Act, p. 20 – 21.

There are also similar rules in the Police Service (Amendment) Regulations.⁷³ A police officer must disclose to the Police Commissioner in writing and within 30 days after his first appointment “any investment or shareholding which he possesses in any company carrying on business inside or outside of Trinidad and Tobago and also of any interest which he has in any professional, commercial, agricultural or industrial undertaking in or outside of Trinidad and Tobago.” This provision is enforced in the same way that other provisions in the Police Service (Amendment) Regulations are enforced, as described in section, 1.1.1.

Additionally, it bears repeating that the Integrity Commission does not have enforcement powers against those persons in public life who fail to make truthful declarations of interest or to make declarations at all, except indirectly if a tribunal is formed under section 15. But while the Integrity Commission is generally unable to enforce provisions relating to declarations of interest, various governmental service commissions can do so against most of the civil servants who fall under the category of persons exercising public functions. For example, the provisions of 110(1)(a-g) in the Public Service Commission (Amendment) Regulations, give a list of the Public Service Commission’s disciplinary powers. These provisions, when considered in concert with the section 30 of the Integrity in Public Life Act which requires declarations of interest to be filed with “the appropriate Commission”, mean that the Public Service Commission has disciplinary authority over those civil servants who have been found to have filed false declarations of interest. Similar disciplinary provisions exist in the regulations of other Service Commissions.

2.2 Adequacy of the legal framework and/or other measures

The standards and measures related to systems for the disclosure of income, assets and liabilities reviewed by the Committee, based on the information made available, are pertinent to the promotion of the objectives of the Convention. Nevertheless, the following analysis of these standards and measures may be useful in analyzing their effectiveness.

The form of declaration and regulations to be created by the Integrity Commission under section 41(1) were approved by an affirmative resolution of Parliament in December 2003 and are consistent with the aims of Article III of the Convention. The Committee notes that this represents a significant step towards fulfilling the goals of the Convention. However, the Committee feels that the Republic of Trinidad and Tobago could benefit from making some adjustments to Part III of the Integrity in Public Life Act. For instance, the government might consider granting more independence to the Integrity Commission so that future amendments to their form of declaration and regulations would not require an affirmative resolution of Parliament. The Integrity Commission, in its 2001 Annual Report to Parliament made the same observation that “there is no gainsaying the fact that the requirement to receive the affirmative resolution of Parliament has become an impediment and has the Commission somewhat disabled in its ability to enforce certain provisions of the Act: clearly an unintended consequence of a well meaning provision.”⁷⁴ In its Annual Report, the Integrity Commission recommended amending section 41(2) to subject approval of the form of declaration and regulations to only a “negative resolution” of Parliament. The Committee will formulate a recommendation in this respect.

⁷³ See S. 149(1)(d) and (e), and 149(2).

⁷⁴ Annual Report of the Integrity Commission to Parliament, 2001. p. 3.

Also, the Republic of Trinidad and Tobago may benefit from amending the Integrity in Public Life Act to give more enforcement powers to the Integrity Commission so that it can impose penalties directly on a person in public life who is in violation of sections 11, 13 or 14. Here the Committee notes that the Integrity Commission, in its Annual Report, recommended that in addition to current fines and prison terms “a more effective sanction would be the imposition of a penalty” by the Integrity Commission. The Committee will formulate a recommendation in this respect.

Section 13 gives the Integrity Commission powers to investigate declarations of financial interests by persons in public life. In addition, under section 15, if the Commission wants to investigate beyond the limitations of section 13, it can “advise the President to appoint a tribunal of two or more of its members to conduct an enquiry to verify the contents of the declaration or the statement filed with the Commission”. Under section 16(2) this tribunal has the powers of a Commission of Enquiry, except that its proceedings are private. The Committee believes that it may be more useful towards fulfilling the aims of the Convention to make these proceedings public, to the extent that the declarations themselves may be allowed to become public, thereby allowing citizens more information regarding the workings of their government. The Committee will formulate a recommendation with respect to these two points.

With regard to section 30 of the Act requiring declarations of interests from most persons exercising public functions, the Committee notes that this requirement constitutes progress towards meeting the objectives of the Convention. However the Committee thinks that the Republic of Trinidad and Tobago may benefit from the following observation. Within the Code of Conduct of the Integrity in Public Life Act, section 30 appears to give the responsibilities for receiving declarations of interests to the Service Commissions referred to in that section. The Committee does not have information at its disposal regarding what provisions have been made by these Commissions to receive these declarations. The Committee will make a recommendation in this regard.

It is also not clear what the rules are regarding under what circumstances the information from financial declarations of persons exercising public functions may be made public. Section 20(1) requires that declarations of financial interest by persons in public life be kept private. On this point, the Committee notes that states party have agreed to Article III, paragraph 4 of the Convention, which aims to create and maintain systems for registering income and “where appropriate, for making such registrations public”. The Committee will make a recommendation in this respect.

There are some organs of government not listed as being required to receive declarations of interest from their employees. For example, it is not clear to which Commission, if any, employees or members of the Elections and Boundaries Commission would report.⁷⁵ Also, the Committee notes that the list of people in section 30 is the same as those people who comprise persons exercising public functions, except that members of the Diplomatic Service and Advisers to the Government are not included. The country under review may wish to include a requirement in this or other legislation that these public officials make declarations of interests, as well. The Committee will formulate a recommendation in this respect.

⁷⁵ For a list of some other Service Commissions see <http://www.gov.tt/links/default.asp>. Generally applicable provisions for Service Commissions are at Sections 126 – 129 of the Constitution of Trinidad and Tobago.

There do not appear to be any fully implemented mechanisms, such as mass media campaigns, information in educational establishments and public institutions, aimed at citizens in general or those who do or may be interested in performing public functions, that guarantee broad knowledge about the purpose and scope of the provisions regarding the declarations of income, assets, and liabilities and the public registry of interests. The Committee will formulate a recommendation in this respect.

The Committee notes, however, that in relation to the general goal of increasing public knowledge and awareness of integrity in government, the Government of Trinidad and Tobago wrote: "In the 2003 Report of the Integrity Commission, attention was drawn to the fact that the Commission had published a Guide on Corporate Governance entitled 'Principles of Integrity for persons in Public Life and Those Exercising Public Functions'. This guide was published for distribution among persons in public life, public bodies, public libraries, and other relevant parties. The guide is part of the Commission's mandate to instruct, advise, and assist heads of public institutions to carry out changes in practices and procedures to reduce the occurrence of corrupt practices and further to educate the public."⁷⁶

With regard to the registrable interests required to be filed with the Integrity Commission by persons in public life under section 14 of the Integrity in Public Life Act, the Committee does not have any information regarding whether such a registry has been established, and if so whether it has been made public. The most recent information comes from the Annual Report of the Integrity Commission for Trinidad and Tobago, 2003, which indicates in section 2.5 that such a register has not yet been created. The Committee will make a recommendation in this respect.

2.3 Results of the legal framework and/or other measures

The Integrity Commission has taken some steps towards fulfilling its function of collecting declarations of interest from persons in public life which reflect an intention to enforce the provisions of the Integrity in Public Life Act. According to its 2000 report, the Commission worked towards reducing the number of declarations that were outstanding under the Integrity in Public Life Act, 1987, which has been replaced by the Integrity in Public Life Act, 2000. "The Commission monitored, reviewed and certified outstanding declarations for 1997, 1998 and 1999. In this regard, 31 declarations were certified for 1999, 5 for 1998 and 2 for 1997. There are still 39 declarations outstanding from the years 1999, 1998, 1997, 1996, and 1995". It is also working towards increasing its staff, as the number of annual declarations that it will need to review has risen tenfold to about 1,120,⁷⁷ and modernizing its facilities so that computerized systems can be used for monitoring filed declarations. The 2002 Report states that the names of 6 people who had still not filed declarations under the earlier 1987 version of the Integrity in Public Life Act were published in the *Gazette* in accordance with section 11(6). The 2003 Annual Report states that 54 declarations still remain outstanding from 23 declarants, despite publication. None of the Reports indicate that any investigations have taken place.

Nevertheless, more recent information is not available to the Committee with which to comprehensively analyze the results of all the provisions that the country under review has in the area of financial declarations and registries of interests. The Committee will make a recommendation in this respect.

⁷⁶ Updated Response to the Questionnaire, p. 24.

⁷⁷ *Annual Report of the Integrity Commission for Trinidad and Tobago Year 2001*, p. 253.

3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4, AND 11 OF THE CONVENTION)

3.1 Existence of provisions in the legal framework and/or other measures

The Republic of Trinidad and Tobago has several oversight bodies that deal with the issues raised in the provisions selected for review in the first round. They are the Integrity Commission, the Public Service Commission, the Attorney General, the Director of Public Prosecutions and Commissions particular to certain governmental functions, such as the Police Service Commission, the Judicial and Legal Service Commission, the Teaching Service Commission and the Judicial Committee of the Privy Council with regard to its function as the final arbiter on removal of judges. There are also Commissions of Enquiry appointed by the President under the Commissions of Enquiry Act on an ad hoc basis, the Auditor General, the Ombudsman, the Freedom of Information Unit in the Attorney General's Office, and the Public Service Appeals Board. Some of the discussion of the functions of these oversight bodies is explained in section 1.1.1 of this report.

The Integrity Commission, established statutorily by Part II, section 4 of the Integrity in Public Life Act, is composed of "a Chairman, Deputy Chairman and three other members who shall be persons of integrity and high standing." The Commission does not have enforcement powers, except with regard to its own members.⁷⁸ Lastly, the Integrity Commission is also responsible for carrying out "programs of public education intended to foster an understanding of standard of integrity," in accordance with section 5(1)(i).

The Attorney General of Trinidad and Tobago is a member of Government with two separate Constitutional roles, namely, a Government role in which he acts as a member of Government in the performance of his duties and the role of the Guardian of the Public Interest in which he independently represents the community at large and ensures that the rights of all Citizens are protected. In this regard ensuring that the legislative and administrative framework is in place in Trinidad and Tobago to control, combat and eradicate corruption is a primary function of the Attorney General.

The Director of Public Prosecutions in Trinidad and Tobago as an independent entity appointed in accordance with the Constitution has the sole responsibility for instituting and undertaking criminal proceedings against any person before the Court in respect of any offence against the laws of Trinidad and Tobago. He exercises the powers of the Director of Public Prosecutions exclusive of the influence of any other person or body. As such his ability to target wrongdoers who breach the laws of Trinidad and Tobago through corruption is unhindered by political or social considerations. This is evidenced by the fact that a number of prominent individuals are at present before the Courts of Trinidad and Tobago facing charges of corruption and fraud.

The Public Service Commission is established by Section 120 of the Constitution to exercise disciplinary control over public officers.⁷⁹ It can investigate most alleged acts of corruption. The procedure to be followed for the institution of disciplinary proceedings is set out in Chapter VII of the Public Service Commission Regulations. For less severe infractions, the Public Service Commission has delegated to the Permanent Secretary or Head of Department under which the alleged

⁷⁸ S. 17(1)(a)

⁷⁹ Trinidad and Tobago's response to the questionnaire, p. 6.

misconduct occurred the authority to investigate and discipline employees.⁸⁰ The Permanent Secretary or Head of Department may act as a tribunal and impose penalties in accordance with Section 85(4)(b),⁸¹ or they may give this investigatory and disciplinary authority to any officer within the Department where the alleged misconduct occurred who is senior in rank to the officer being investigated. This officer may also impose penalties, but does not have the same range of options as a Permanent Secretary or a Head of Department.⁸² Only the Public Service Commission may impose the most severe penalties, such as dismissal or reduction in rank.⁸³

In the case of an allegation against a Permanent Secretary or Head of Department,⁸⁴ the Public Service Commission will appoint an officer to investigate the allegation.⁸⁵

The Judicial Committee is “the Judicial Committee of the Privy Council established by the judicial committee act, 1883 of the United Kingdom as from time to time emended by any act of Parliament of the United Kingdom.”⁸⁶

The Police Service Commission⁸⁷ is a quasi-judicial body that can act on allegations of corruption when they are brought to its attention by the Manager of the Police Service, or the Commissioner of Police. For minor acts of misconduct, the Police Service Commission has delegated authority to Police Officers in the First Division, from Superintendents to the Commissioner, to investigate and discipline Police Officers in the Second Division. Each of these Officers may serve as a one-person tribunal in the investigation, hearing and determination of misconduct.

Lastly, in its response the Republic of Trinidad and Tobago writes, “The Code of Ethics for Parliamentarians including Ministers provides in rule 13 that there should be established in each House of Parliament a Standing Ethics Committee empowered to *inter alia* ‘receive, investigate and report upon any complaints of departures by Members from the Code of Ethics, and in particular, upon allegations involving conflict of interest’.”⁸⁸

For a discussion on the office and functions of the Auditor General, the Judicial and Legal Service Commission, Commissions of Enquiry, and the Ombudsman, and the Code of Conduct set out in the Civil Service (Amendment) Regulations, please refer to section 1.1.1.

⁸⁰ *Id.*, p. 7.

⁸¹ S. 85(4)(b) refers to the penalties in S. 110 (c) through (g) of the same regulations, which are “reduction of remuneration...; deferment of increment...; stoppage of increment...; reprimand; fine”.

⁸² 85(4)(b) refers to the penalties in 110(f) or (g), which are “reprimand; fine.”

⁸³ S. 110(1)(a) and (b).

⁸⁴ For definition see, S. 84(A) in the Public Service (Amendment) Regulations, 1990.

⁸⁵ S. 84(B)(1), Public Service (Amendment) Regulations.

⁸⁶ P. 13 of the Constitution of Trinidad and Tobago.

⁸⁷ Information for this part of the section that deals with the Police Service Commission comes from a 1995-1998 report from the Report of the Police Service Commission.

⁸⁸ Trinidad and Tobago’s response to the questionnaire, p. 7.

3.2 Adequacy of the legal framework and/or other measures

The potential strengths and weaknesses of these Commissions, as regulated by the relevant provisions, have been discussed in previous sections: 1.1.2, and 2.2. Reviewing briefly, section 41(2) of the Integrity in Public Life Act requires the Integrity Commission to submit its forms and regulations relating to declarations from persons in public life, and any amendments or additions therein, for Parliament's approval. Section 98(2) of the Constitution of the Republic of Trinidad and Tobago puts certain restrictions on the investigatory powers of the Ombudsman. With regard to the Public Service Commission, the Commissions of Enquiry, and the Police Service Commission, further more detailed analysis may be helpful to the Republic of Trinidad and Tobago in meeting the goals of the Convention.

As mentioned in the previous section, the Code of Conduct set out in the Civil Service (Amendment) Regulations requires the Permanent Secretary or Head of Department to determine the nature and degree of compromise, and decide upon an appropriate course to resolve it. The Committee contrasts that requirement with the response of the Republic of Trinidad and Tobago which says that the Permanent Secretary or Head of Department must report any allegations of corruption to the Public Service Commission, then appoint an investigator and give findings to the Commission, which then has the power to conduct its own investigation and impose penalties. Under the Civil Service (Amendment) Regulations, the Permanent Secretary or Head of Department appears to have more leeway in deciding what action to take against an employee who has been found to have committed an act of misconduct.

The Committee notes that the old text of Section 85(1) of the Public Service Commission Regulations provided for Permanent Secretaries or Heads of Departments to report allegations of misconduct or indiscipline to the Public Service Commission. However, Section 85, as amended, does not provide for such a report to be made. In light of this situation, and notwithstanding the fact that the Public Service (Amendment) Regulations delegates responsibility for disciplinary matters related to minor acts of misconduct to the Permanent Secretaries or Heads of Department, the Committee notes that there is no longer any provision specifically providing that acts of misconduct or indiscipline which are not minor in nature must be reported to the Public Service Commission. In this regard, the Committee will formulate a recommendation.

3.3 Results of the legal framework and/or other measures

The country under review wrote in its response that "In the year 2000 the Public Service Commission preferred seventeen (17) disciplinary charges against officers in the Public Service. No information is available on the enforcement of the Code of Conduct contained in the Integrity in Public Life Act. This may be attributed to the fact that the legislation has only been in force since November 2000." However, for enforcement results for the financial disclosure requirement in the same Act, see the results for section 2.3 above.

The report from the Police Service Commission was made available from the government. The Committee finds it difficult to discern the effectiveness of the Police Service Commission as there is no information less than six years old, and it is not known whether the recommendations discussed in the section above have already been implemented.

There does not exist sufficient information, such as a system of records that tracks the number of charges preferred under the Integrity in Public Life Act, to permit the Committee to perform a complete analysis of the results. The Committee will formulate a recommendation in this respect.

4. MECHANISMS TO PROMOTE THE PARTICIPATION OF CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11)

4.1 GENERAL PARTICIPATION MECHANISMS

4.1.1. Existence of provisions in the legal framework and/or other measures

The Republic of Trinidad and Tobago in its response writes that “To date, no formal or statutory mechanisms have been implemented which are aimed at specifically encouraging participation by civil society and nongovernmental organizations in efforts to prevent corruption.” However, there are in the Constitution and in the government’s response several provisions and mechanisms that are related to the goals of Article III, paragraph 11 of the Convention. The Committee will formulate a recommendation in this respect.

Section 4 of the Constitution of the Republic of Trinidad and Tobago guarantees many freedoms to the citizens of the Republic of Trinidad and Tobago such as freedom of thought and expression, freedom of association and assembly and freedom of the press, and the right not to be deprived of life, liberty and the security of person or property without access to due process.

Citizens can lodge complaints against public officials under section 32 of the Integrity in Public Life Act. The Act also requires the Integrity Commission to enquire into any alleged breaches of the Act or any allegations of corrupt or dishonest conduct that have been brought to its attention by a member of the public.

Also, the Trinidad and Tobago Transparency Institute has issued recommendations on the Integrity in Public Life Act through the press, and is actively engaged in building coalitions within the country with the aim of improving mechanisms such as transparency and accountability in government procurement and other decision-making, an effective auditor general and ombudsman, a free media and access to official information, and an independent judiciary, investigators and prosecutors. The government writes in its response that “in fulfilling its mandate the local branch of the Institute collaborates with both Government and civil society.”⁸⁹

4.1.2 Adequacy of the legal framework and/or measures

The Constitutional provisions for this matter that exist in the Republic of Trinidad and Tobago and that are being analyzed are typical of a democratic state, and they are relevant to the pursuit of the Convention’s goal. The legal and other provisions listed above also point to that goal, and they will be taken into account in analyzing each of the participation mechanisms indicated in the classifications contained in the methodology for analyzing implementation of Article III, paragraph 11 of the Convention.

⁸⁹ *Id.* p. 23.

The Committee also notes that the government's collaboration with the local branch of the Transparency Institute on anti-corruption efforts represents positive action on the part of the government towards promoting the participation of nongovernmental organizations in efforts to prevent corruption.

4.1.3 Results of the legal framework and/or other measures

The government writes that it is "working on establishing a formal mechanism to encourage the participation of civil society and nongovernmental organizations in all the mandates listed in the plan of action of the Summit of the Americas including the fight against corruption."⁹⁰

The Committee does not have information with which to undertake a comprehensive analysis regarding the number of complaints received by the Integrity Commission from civil society and nongovernmental organizations.

4.2 MECHANISMS FOR ACCESS TO INFORMATION

4.2.1 Existence of provisions in the legal framework and/or other measures

In 1999, the Government enacted a Freedom of Information Act. The Act came into force on February 20, 2001.⁹¹ The Act gives members of the public, including civil society and non governmental organizations, a statutory right to access information in the possession of public authorities. Section 11 provides every person with the right to access to official documents. Part IV of the Act lists documents that are exempt from disclosure.⁹²

"Public authority" is defined in section 4 and includes *inter alias*, a Ministry or a department or division of a Ministry; the Cabinet; a Service Commission and a company that is owned or controlled by the State.

Section 5 exempts the President, Commissions of Enquiry issued by the President, and a "public authority or function of a public authority as the President may, but Order subject to negative resolution of Parliament, determine" from the obligations of the Act.

Section 7 requires all public authorities to publish *inter alias* a statement of the categories of documents that are maintained in the possession of the public authority and a statement of the procedure to be followed by a person when a request for access to a document is made to a public authority.⁹³

Section 13 provides that in order for a person to obtain access to an official document, he must make a request using the form set out in the Schedule, to the appropriate public authority.⁹⁴

Section 15 imposes a time limit for a public authority to notify an applicant of approval or refusal of his request. This must be done not more than 30 days after the request is made.

⁹⁰ See Trinidad and Tobago's response to questionnaire, p. 24.

⁹¹ See <http://www.nalis.gov.tt/gov.html> for users guide and request form.

⁹² S. 24-35 of the Freedom of Information Act.

⁹³ See Trinidad and Tobago's response to the questionnaire, p. 23.

⁹⁴ *Id.*

Section 17 states that “no fee shall be charged by a public authority for the making of a request for access to an official document” and that where printed copies or copies in other form are required then “the fees payable by the applicant shall be commensurate with the cost incurred in making the documents available.”

Section 24 exempts from the requirements of the Act documents that are: “the official record of any deliberation or decision of Cabinet; a document that has been prepared by a Minister of Government or on his behalf or by a public authority for the purpose of submission for consideration by Cabinet or a document which has been considered by Cabinet and which is related to issues that are or have been before Cabinet; a document prepared for the purpose of briefing a Minister of Government in relation to issues to be considered by Cabinet.”

Section 35 states that “notwithstanding any law to the contrary a public authority shall give access to an exempt document where there is reasonable evidence that significant abuse of authority or neglect in the performance of official duty, injustice to an individual, danger to the health or safety of an individual or of the public, or unauthorized use of public funds.”

If a public authority does not allow a person access to an official document, the person may either complain in writing to the Ombudsman in accordance with section 38A or he may apply to the High Court for judicial review of the decision under section 39 of the Act.⁹⁵

The Act also allows people who think they have been unjustly denied access to a document to appeal under The Judicial Review Act for consideration by a judge on the decision for denial.⁹⁶ A Freedom of Information Unit was established in May 2001 to monitor, advise and report on compliance by public authorities with the Act.⁹⁷

4.2.2 Adequacy of the legal framework and/or other measures

The Freedom of Information Act appears to be an effective tool that members of the public can use to access public documents under the control of the government. The Committee notes that this law regulates the various aspects of this issue and represents major progress in the implementation of Article III, paragraph 11 of the Convention.

However, the Committee feels that the Republic of Trinidad and Tobago could benefit from expanding the reach of the Act to apply to documents produced by the office of the President, Commissions of Enquiry issued by the President once they have completed their investigations, and public authorities or functions of public authorities designated by the President. In particular, the Committee notes that the President may choose to exempt a public authority or functions of a public authority.⁹⁸ It may be helpful in furthering the aim of this provision of the Convention to state explicitly under what circumstances or what factors the President may take into account in reaching this decision. The Committee will formulate a recommendation in this respect.

⁹⁵ *Id.*, pp. 23-24.

⁹⁶ See Judicial Review Act, S. 39.

⁹⁷ *Id.*, p. 24.

⁹⁸ On the Trinidad and Tobago’s government website at <http://www.foia.gov.tt/about/exempt.asp> there are listed several public financial institutions that have obtained exemptions by order of the President, such as The Agricultural Development Bank, The Business Development and Company Limited, and The National Entrepreneurship Development Company Limited.

The Committee notes that there is an exemption for Cabinet documents in section 24, particularly a “document which has been considered by Cabinet and which is related to issues that are or have been before Cabinet.” The Cabinet is vested with the general direction and control of the government, and as such the matters it deals with are probably of far reaching importance. The Committee is concerned that this exemption for Cabinet documents could be too broad. The Republic of Trinidad and Tobago may wish to review the scope of the exemption on cabinet documents. The Committee will formulate a recommendation in this respect.

4.2.3 Results of the legal framework and/or other measures

From February 20th, 2001 to February 19th, 2002 since the Act came into force, approximately sixty-six requests were made under the Act. Forty-three of these requests were made to Service Commissions. Out of the 66 requests, 4 cases resulted in a determination that the applicant was not entitled to access to a requested document. The Committee does not have at its disposal information on the basis for the denials.⁹⁹

During this period, there were no applications for judicial review. There was one complaint to the Ombudsman and based on his recommendation, the public authority supplied the requested information.¹⁰⁰

Under section 40(1) of the Act, the Minister is required to prepare a report on the operation of the Act after the end of each year and to have a copy of the report laid before each House of Parliament. Public Authorities have been requested by the Freedom of Information Unit to submit quarterly returns of requests made to them for the purpose of preparation of the Annual Reports. At the time of the Republic of Trinidad and Tobago’s response, the first Annual Report was still being completed,¹⁰¹ and it is reported that no annual report has yet been finished.¹⁰² The Committee will make a recommendation in this regard.

In order to better evaluate the functioning of the Freedom of Information Act, it would be useful for the Republic of Trinidad and Tobago to collect information relevant to its functioning, such as statistics on who made the requests and the results of those requests. The Committee will make a general recommendation in this respect.

4.3 CONSULTATIVE MECHANISMS

4.3.1 Existence of provisions in a legal framework and/or other measures

In its response, the government writes that “as a matter of established practice the Law Commission consults with stakeholders in government and civil society in the preparation of any legislation which affects the public.”¹⁰³

⁹⁹ Trinidad and Tobago’s response to the questionnaire, p. 24.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Report of the Trinidad and Tobago Transparency Institute, p.13.

¹⁰³ *Id.*, p. 26.

The response also mentions that the Standing Orders of the House of Representatives gives authority to the House of Representatives to appoint Select Committees and Joint Select Committees of Members of Parliament for the purpose of soliciting opinions from stakeholders in the government and civil society prior to formulating legislative policy or enacting draft legislation.¹⁰⁴ Section 79(b)(12) reads that “meetings of each Joint Select Committee appointed under this Standing Order and of any Sub-Committee appointed under paragraph (6) of this standing order shall be held in public, unless the Committee or both houses otherwise resolve.”

4.3.2 Adequacy of the legal framework and/or other measures

The mechanisms that have been reviewed so far are relevant for the promotion of the purposes of the Convention.

The Committee notes that the fact that the meetings of the Joint Select Committees are by default publicly held is helpful in promoting public awareness of the issues being considered under the pending legislation, and may thereby foster a greater exchange of information between civil society and nongovernmental organizations and the government.

The Committee notes that the Standing Orders of the House of Representatives do not specifically mention seeking input from sources outside the government for the purpose of developing pending legislation. Section 77(1) of the Standing Orders of the House of Representatives provides that a Select Committee “...shall be appointed by order of the House which shall specify the terms of reference of the Committee....” Regarding Joint Select Committees, section 79B(1) provides that “subject to paragraph (3), the House of Representatives shall appoint Members to sit with Members of the Senate as Joint Select Committees to inquire into and report to it in respect of: Government Ministries; Municipal Corporations; Statutory Authorities; Service Commissions; enterprises owned or controlled by or on behalf of the State or which receive funding from the State of more than two thirds of their total income in any one year.” In practice, these Committees may be used for purposes consistent with Article III of the Convention. However, the Committee feels that the Republic Trinidad and Tobago could benefit from explicitly including pending legislation as one of the matters into which the Committees may seek input from outside organizations. The Committee will formulate a recommendation in this respect.

The Committee also feels that the Republic of Trinidad and Tobago could consider adopting further measures that provide for the possibility of having members of civil society and nongovernmental organizations become part of advisory councils or committees responsible for advising on the use of public resources. The Committee will formulate a recommendation in this respect.

4.3.3 Results of the legal framework and/or other measures

The Republic of Trinidad and Tobago in its response describes how in anticipation of updating the Integrity in Public Life Act, the Senate passed a resolution calling on the Law Commission to write a Green Paper for presentation to Parliament. A Joint Select Committee was then formed to receive public comment on ways to improve the Integrity in Public Life Act. The Select Committee held over fourteen meetings with a wide array of stakeholders and consulted broadly with the public. Many of their recommendations were then incorporated into the Integrity in Public Life Act, 2000.¹⁰⁵

¹⁰⁴ *Id.* p. 26.

¹⁰⁵ *Id.*

The purpose which the Joint Select Committee fulfilled in reviewing the integrity legislation of the Republic of Trinidad and Tobago is consistent with the aim of Article III of the Convention.

The Committee does not have at its disposal any other information regarding Select Committees being used for the purpose of consultation or instances in which the Law Commission has consulted with stakeholders in civil society in preparation of legislation. Taking into consideration the limited character of the information that the Committee has at its disposal, the Committee will formulate a recommendation.

4.4 MECHANISMS TO ENCOURAGE ACTIVE PARTICIPATION IN PUBLIC ADMINISTRATION

4.4.1 Existence of provisions in a legal framework and/or other measures

On the basis of the Government's response, there exist standards that facilitate the participation of civil society and nongovernmental organizations in public policy making and decision making.

In addition to those mechanisms mentioned by the country in its response, the Constitutional provisions contained in Section 4 are useful in protecting the liberties that provide a basis for civil society and nongovernmental organizations to operate freely and independently and include themselves in efforts by the government to fight corruption. These freedoms result in a free and independent media. The Republic of Trinidad and Tobago engages in the practice of recording public comment from television and radio talk shows, and then processing these comments and making them available to members of Parliament. This program is run by the Government through its Ministry of Public Administration and Information.¹⁰⁶

There is also the Opinion Leaders Group which is a group of 2800 individuals who come from all ages, locations, occupations, and races and who are surveyed on a variety of public service issues. This program is run by The Ministry of Public Administration and Information, with assistance from MORI International, which is an well-known firm that has experience in the area of corporate, consumer and social research, and from the local firm of HHB Associates Limited.¹⁰⁷ The Government's Central Statistical Office assisted in recruiting the Group. The findings will be used to help guide government policy relating to administrative reform within the public service.

Additionally, town meetings are also held by both the Government and the media from time to time to encourage public discussion and invite public comment from stakeholders on matters of importance.¹⁰⁸

4.4.2 Adequacy of the legal framework and/or other measures

The mechanisms that have been reviewed so far are relevant for the promotion of the purposes of the Convention. Making available to government officials public comments from the media is a resourceful method of informing members of Parliament. The Committee considers that it may be useful for the Republic of Trinidad and Tobago to make these comments available to any area of government which may stand to benefit from them, in addition to Parliament. The Committee will formulate a recommendation in this respect.

¹⁰⁶ *Id.*, p. 27.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

The Opinion Leaders Group is a significant and creative effort to solicit the opinion of a large and representative sample of Trinidadians, consistent with the aim of Article III of the Convention. The government writes in its response that “the findings will be released later this year [2003]. The findings of the survey will be a basis for the formulation of government policy for administrative reform within the public service.”¹⁰⁹ The Committee does not have information on the specifics of the program, such as the results of the survey, how often the group is consulted or whether the survey will be repeated. Regarding results, it is indicated by the Trinidad and Tobago Transparency Institute that the responses from the Opinion Leaders Group have not yet been made available to the public.¹¹⁰ The Committee will formulate a recommendation in this respect.

A third mechanism that actively encourages participation in public administration is town meetings. The Response of the Government states that these meetings are held “from time to time” to “invite public comments from stakeholders” but does not indicate whether it is civil society – or only certain portions of civil society – or government that has the authority to call or attend such a meeting, and in the case that it is the latter, what authority or authorities within government are authorized or expected to convene and attend the meetings. The Republic of Trinidad and Tobago may wish to consider strengthening this mechanism by holding the meetings at regular intervals, or by instituting a mechanism by which civil society may convene a meeting for a specific purpose at which government representatives will regularly attend. The Committee will formulate a recommendation in this respect.

The Committee wishes to emphasize the importance of a free press as a mechanism to promote the participation of civil society and non-governmental organizations in efforts to prevent corruption. In relation to this, the Trinidad and Tobago Transparency Institute has noted that existing libel law allows any person mentioned by the press in a corruption or integrity related matter can file for an injunction “effectively prohibiting further publication by the media.”¹¹¹ The Committee will make a recommendation in this regard.

4.4.3 Results of the legal framework and/or other measures

The Government reports that government monitoring of public comment has been a very effective mechanism for ensuring that the views of members of civil society and nongovernmental organizations are taken into account by the government. The Committee does not have at its disposal information regarding how often these comments are gathered, or how often they are considered by Members of Parliament in formulating policy. The Committee will formulate a recommendation in this respect.

The Committee does not have at its disposal information regarding how useful the town meetings are perceived to be by either civil society or government. The Committee will formulate a recommendation in this respect.

¹⁰⁹ *Id.*

¹¹⁰ Report of the Trinidad and Tobago Transparency Institute, p. 13.

¹¹¹ Report of the Trinidad and Tobago Transparency Institute, p. 14.

There is not sufficient information to permit the Committee to undertake a comprehensive analysis of the results of the Opinion Leader's Group Survey at the present time. The Committee does not have information on the results of the program.¹¹² As of the date of the Government's response, the Opinion Leaders Group Survey was still underway.

4.5 PARTICIPATION MECHANISMS IN THE FOLLOW-UP OF PUBLIC ADMINISTRATION

4.5.1 Existence of provisions in a legal framework and/or other measures

Regarding the existence of mechanisms in the follow-up of public administration, the government states in its response that none exist at present.¹¹³

However, it is relevant to mention the provisions referred to in section 4.4.1 of this report on freedom of the press, of thought, and of expression is guaranteed by Section 4 of the Constitution. As well, there is the Opinion Leaders Group, and town meetings, both of which may serve to advance the aims of the Convention.

Also relevant are the statements of registrable interests of persons in public life, as described in section 2.1 of this report. This mechanism in particular has the potential to allow all levels of civil society to help ensure that their government is carrying out its functions properly.

Another mechanism that allows for public participation in the follow-up of public administration is the Integrity Commission, which provides citizens a way to voice dissatisfaction with improper conduct on the part of public officials.

Additionally, mention should be made of the combined efforts of the government and the Trinidadian branch of Transparency International in efforts to combat corruption, as described in section 4.4.1.

Lastly, there is also the Freedom of Information Act, referred to in section 4.3.1, which allows citizens to monitor the decisions and policies of government administrators.

4.5.2 Adequacy of the legal framework and/or other measures

The standards and mechanisms in the area of participation in the follow-up of public administration that the Committee has examined, based on information available to it, are relevant for promoting the purposes of the Convention.

Also relevant for the purposes of participation in the follow-up of public administration are the recommendations in Chapters 2 and 4 regarding the mechanisms referred to in section 4.5.1.

The Committee feels that the country under review is in many ways moving towards meeting the aims of the Convention, as indicated by some of the mechanisms referred to in previous sections which incorporate the objective of guiding and facilitating participation in public functions.

¹¹² On this point, the Trinidad and Tobago Transparency Institute states that "it is not clear what has happened to the Opinion Leaders Group", p. 14 of its report.

¹¹³ *Id.*, p. 28.

However, the Committee also feels it is advisable for the Republic of Trinidad and Tobago to consider strengthening and continuing to develop and implement mechanisms that encourage civil society and nongovernmental organizations to participate in the follow-up of public administration. This could be achieved in a number of ways. For example, after considering and implementing the above recommendations on such matters as scheduling and participation and attendance in town meetings, follow-up in the Opinion Leader Group Survey, declarations of financial interests, ensure that these new rules and standards can be monitored and enforced with sanctions by appropriate bodies, such as the Integrity Commission, or the Public Service Commission. The Committee will formulate a recommendation in this respect.

In addition the Committee feels that the country under review could benefit from publicizing the participatory mechanisms concerning the monitoring of public administration, and implementing training or education programs designed to give citizens the knowledge and preparation necessary to participate actively in the monitoring of the performance of public functions for the purpose of preventing corruption. Such programs could range from public education classes on civic responsibilities to use of the mass media to disseminate relevant information. The Committee will formulate recommendations in this respect.

The Committee feels that the Integrity in Public Life Act could be amended to give greater encouragement to people to file complaints with the Integrity Commission. Under section 32(2), there is a fine for knowingly and mischievously making a false complaint – a maximum fine of TT \$500,000 – which seems high enough to be a deterrent to filing what may be a reasonable complaint about what could be an improbable and difficult to prove occurrence. The Committee will make recommendations in this regard.

Lastly, the Committee considers that the country under review may wish to adopt methods that allow civil society and non governmental organizations to facilitate and assist in the development of new participation mechanisms in the follow-up of public administration. The Committee will formulate a recommendation in this respect.

4.5.3 Results of the legal framework and/or other measures

The mechanisms referred to in 4.5.1 incorporate 4.3.1 and 4.4.1, and the Committee thus refers to the considerations presented there.

Other than the above, the absence of more information does not allow a comprehensive analysis of objective results in this field. Taking this consideration into account, the Committee will formulate a recommendation.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

5.1 MUTUAL ASSISTANCE

5.1.1 Existence of provisions in the legal framework and/or other measures

The Republic of Trinidad and Tobago has a law for mutual assistance as called for in Article XIV.1 of the Convention. The Mutual Assistance in Criminal Matters Act 1997, as amended by Act No 7 of 2000, is the Republic of Trinidad and Tobago's domestic legislation for implementing its mutual legal assistance treaties in criminal matters.¹¹⁴

¹¹⁴ *Id.*, p. 34.

There are two ways for a foreign state to request the assistance of the Republic of Trinidad and Tobago in pursuing an investigation into an act of corruption: treaty and convention requests, and non-treaty requests. A greater degree of assistance is available under a treaty or convention request than under a non-treaty request.¹¹⁵ Requests under the Mutual Assistance in Criminal Matters Act 1997 can only be made under a treaty, multilateral convention, special arrangement or designation. Under the Act, Courts are empowered “to gather evidence for criminal investigation or prosecution in a foreign state or entity or to locate a person who is suspected of having committed an offence....”¹¹⁶ The Act permits the Republic of Trinidad and Tobago to give assistance at any stage of the legal process, from investigation to appeal.¹¹⁷

The Central Authority Division receives and reviews the requests to see if they meet formal treaty requirements and the legal requirements needed for Trinidadian law enforcement authorities to execute the request.¹¹⁸ If the request is for a compulsory measure, such as search and seizure, then “for most types of orders, the requesting authority must show reasonable grounds to believe that an offence has been committed and that evidence of the commission of the offence will be found in Trinidad and Tobago. In general, the Central Authority carries out the execution of the request with investigations done by the Counter Drug and Crime Task Force, the Fraud Squad or Criminal Investigations Division. Counsel with the Central Authority will apply to the court of competent jurisdiction for the necessary orders.”¹¹⁹

Requests submitted to the Central Authority Division under a treaty or administrative arrangement that are not compulsory will be given to the appropriate police or investigatory authority, or a government agency in order to provide the assistance requested.¹²⁰

In its response, the Republic of Trinidad and Tobago lists the following actions, among others, that the government may take under the Mutual Assistance in Criminal Matters Act:

- obtaining evidence by warrant and production order;
- compelling witness testimony, including compelling witnesses to give evidence in foreign proceedings;
- lending exhibits which have been tendered in Trinidad and Tobago court proceedings;
- obtaining an order for the examination of a place or site in Trinidad and Tobago;
- the transfer of a sentenced prisoner (with his or her consent) to testify or assist in an investigation;
- the enforcement of orders made by a court of criminal jurisdiction for the restraint, seizure or forfeiture of property situated in Trinidad and Tobago, and;
- enforcement of foreign criminal fines (to a limited extent).

Specific information required in a request is specified in the corresponding bilateral treaty or convention. However, the Republic Trinidad and Tobago also lists the following as information that broadly speaking should be included in a request: a summary of the allegations under investigation or prosecution; the text of the offences under investigation or prosecution in the requesting state or

¹¹⁵ *Id.*, p. 28.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*, p. 29.

¹¹⁹ *Id.*

¹²⁰ *Id.*

entity; a description of the evidence sought; relevant legislations and provisions; any other information that might allow Trinidadian officials to identify and provide the evidence requested or to render the assistance sought.

The Committee notes that in its response, the country under review also mentions that the Prevention of Corruption Act 1987 has been used to present requests for assistance.

5.1.2 Adequacy of the legal framework and/or other measures

The provisions mentioned by the Republic of Trinidad and Tobago in its response can contribute to achieving the objective of the Convention of promoting and facilitating mutual assistance among State Parties; they can also serve to meet the specific goals of the Convention related to the investigation and prosecution of acts of corruption, to the extent that they can be used for such purposes.

Consideration is given to the comment by the Republic of Trinidad and Tobago in its response that “the Government of Trinidad and Tobago has not presented nor has it received any requests for mutual assistance under the Convention.”

5.1.3 Results of the legal framework and/or other measures

Although the Republic of Trinidad and Tobago has neither presented nor received any requests for assistance under the Convention, it has presented requests under the Prevention of Corruption Act 1987 and the Mutual Assistance in Criminal Matter Act 1997 as amended. The reply did not report an actual number of requests received under these Acts. However, the Government says that all “requests are answered by the Government within a time frame of four to six weeks.”¹²¹

5.2 MUTUAL TECHNICAL COOPERATION

5.2.1 Existence of provisions in the legal framework and/or other measures

The Republic of Trinidad and Tobago reports that informal mechanisms exist for mutual technical cooperation and that two examples are Canada and the United Kingdom lending assistance in helping to establish a Central Authority.¹²²

5.2.2 Adequacy of the legal framework and/or other measures

The Committee notes that details regarding the informal mechanisms mentioned above are not described in the Government’s reply. It would be helpful for the purposes of the Convention to record and disseminate the details of these informal mechanisms, to the extent that a process has been established, in order to assist other countries in understanding how to benefit from or provide assistance to the Republic of Trinidad and Tobago. The Republic of Trinidad and Tobago may also wish to establish a formal mechanism to further the aim of the Convention in this regard. The Committee will make recommendations in this regard.

¹²¹ *Id.*, p. 29.

¹²² *Id.*, p. 31.

5.2.3 Results of the legal framework and/or other measures

The Committee notes a lack of information concerning the results of the informal mechanisms referred to in the government's response. The Committee will make a recommendation in this regard.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

6.1 Existence of provisions in the legal framework and/or other measures.

As reported in its response, under the Mutual Legal Assistance in Criminal Matters Act 1997, the Republic of Trinidad and Tobago is using the Attorney General as its central authority for the purpose of addressing requests for international mutual assistance, as set forth in the Convention. In addition, the government reports that the Attorney General directs any requests for technical cooperation to the relevant government Department or Division.

6.2 Adequacy of the legal framework and/or other measures

Designation of the Attorney General is appropriate for promotion of the purposes of the Convention. According to the Government, "The Central Authority Department is equipped with the necessary manpower needed, since it receives the assistance of the different investigative departments in the Police Service in investigating offences and in the gathering of evidence, documents, proceeds of crime and witnesses."¹²³

The government, however, does not report in its response that it has communicated this designation to the Organization of American States. Given this circumstance, the Committee will make a recommendation.

III. CONCLUSIONS AND RECOMMENDATIONS

Based on the review carried out in Section 2 of this report, the Committee wishes to make the following conclusions and recommendations with respect to the implementation by the Republic Trinidad and Tobago of the provisions contained in Article III, Paragraphs 1 and 2 (standards of conduct and mechanisms to enforce these standards of conduct); Article III, Paragraph 4 (systems for disclosing income, assets and liabilities), Article III, Paragraph 9 (oversight bodies, only with respect to how these bodies perform functions relating to the compliance of the provisions listed in Paragraphs 1, 2, 4 and 11 of Article III of the Convention); Article III, Paragraph 11 (mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption); Article XIV (assistance and cooperation); and Article XVII (central authorities) of the Convention, all of which were selected within the framework of the first round.

¹²³ *Id.*, p. 32.

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1 Standards of conduct geared towards preventing conflicts of interest and mechanisms to enforce compliance.

The Republic of Trinidad and Tobago has considered and adopted measures to establish, maintain, and strengthen standards of conduct with respect to the prevention of conflicts of interest and enforcement mechanisms, as described in Chapter 2, Section 1.1 of this report.

In light of the comments made in that section, the Committee suggests that the Republic of Trinidad and Tobago consider strengthening the implementation of laws and regulatory systems related to conflicts of interest. In meeting this recommendation, the Republic of Trinidad and Tobago may wish to consider the following measures:

- a. Strengthen the measures related to conflicts of interest with respect to members of the judiciary, as well as those who perform judicial functions, subject to its constitution and the fundamental principles of its legal system, taking into account the following:
 - i. Consider the usefulness of defining in a code of conduct for judicial officers what actions or omissions would constitute ‘misbehaviour’.
 - ii. Review relevant provisions with an aim towards removing any conflicts that cause the provisions of the Integrity in Public Life Act not to be applied to judges.
 - iii. Create specific codes of conduct for judicial officers that would promote measures to create, maintain, and strengthen standards of conduct for the correct, honorable, and proper fulfillment of public functions, in addition to mechanisms to enforce these standards of conduct.
- b. Create a mechanism that would allow the Service Commissions to hold administrative hearings and dismiss public servants based on a finding of involvement in corrupt activity independent of whether proceedings are taken against the public servant in any Court.
- c. Review and amend Service Commission regulations as appropriate to ensure that investigative and disciplinary processes will not entail lengthy delays.
- d. Strengthen the provisions within the Integrity in Public Life Act taking into account the following:
 - i. Set up a system to ensure that the Integrity Commission has enough resources to perform its functions.

- ii. Undertake a review of existing regulations and amend them where appropriate to ensure that the Integrity Commission has a system to train, inform and respond to requests for advice and consultation by public servants, in compliance with its mandate.
- iii. Ensure that the competent oversight agencies have a system to see that public servants comply with the provisions of the Code of Conduct in the Integrity in Public Life Act, including having public servants sign a written agreement to abide by the Code of Conduct in the Integrity in Public Life Act.
- iv. Enact specific measures, where appropriate, to ensure that conflicts of interest that may arise in all branches of government are covered (see section 1.1.2 of Chapter 2).
- e. Incorporate into the Civil Service Regulations and the Civil Service (Amendment) Regulations, as appropriate, provisions dealing specifically with the detection and/or prevention of conflicts of interest.
- f. Review and amend where appropriate existing regulations to ensure that the disciplinary process of the Police Service Commission is efficient and effective, and ensure that the Commission has resources to operate accordingly.
- g. Encourage the updating of a more comprehensive version of the proposed Code of Ethics for Parliamentarians including Ministers than the one previously in force, incorporating into the new version provisions similar to those contained in the Code of Conduct in the Integrity in Public Life Act, and enforcement provisions.
- h. Establish as a mandatory Committee of the Parliament the Standing Ethics Committee of the Houses of Parliament, and ensure that the Code of Ethics be contained in the Rules of the House of Parliament and the Senate.
- i. Consider including in appropriate legislation provisions to protect whistleblowers who report acts of corruption from threats and acts of retaliation.
- j. Subject to compatibility with the constitutional right of the individual to freedom of work, incorporate into the legal system relevant and appropriate restrictions for those who leave public sector employment, within a reasonable period of time after leaving their position, regarding activities that could involve them taking undue advantage of their status as a former public servant. (See Chapter II, section 1.1.2 of this Report).

1.2 Standards of conduct and mechanisms to ensure the conservation and proper use of resources entrusted to public officials

The Republic of Trinidad and Tobago has considered and adopted measures designed to establish, maintain and strengthen standards of conduct to ensure the conservation and proper use of resources entrusted to public officials in the performance of their functions, as mentioned in Chapter 2, Section 1.2 of this report.

In view of the comments made in this section, the Committee suggests that the Republic of Trinidad and Tobago consider strengthening the system of control of public resources. In meeting this recommendation, the Republic of Trinidad and Tobago may wish to consider the following measures:

- a. Conduct an analysis of the use and effectiveness of standards of conduct for ensuring the conservation and proper use of public resources and of the mechanisms existing in the Republic of Trinidad and Tobago to enforce these standards, as instruments for preventing corruption. As an outcome of said analysis, consider the adoption of measures to promote, facilitate, and consolidate or ensure the effectiveness of these instruments for this purpose.

1.3 Standards of conduct and mechanisms concerning measures and systems requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

The Republic of Trinidad and Tobago has considered but not adopted measures designed to establish, maintain and strengthen standards of conduct and mechanisms related to measures and systems that require public servants to report to the appropriate authorities acts of corruption in the performance of public functions.

In light of this situation, the Committee suggests that the Republic of Trinidad and Tobago consider creating measures requiring public officials to report to the appropriate authorities acts of corruption in the performance of public functions of which they are aware. In implementing this recommendation, the Republic of Trinidad and Tobago could consider the following measures:

- a. Incorporate into existing legislation a requirement that all public servants must report acts of corruption of which they become aware during the course of their public functions, and make the corresponding Commission responsible for training.
- b. Assess the relevance of offering greater protection to civil servants who report acts of corruption, especially in cases where their superiors are involved in the acts being reported.
- c. Review the results of the investigations carried out by the Commissions of Enquiry in order to analyze the effectiveness of any legislation already in place.

2. SYSTEMS FOR REGISTRATION OF INCOME, ASSETS AND LIABILITIES (ARTICLE III, PARAGRAPH 4 OF THE CONVENTION)

The Republic of Trinidad and Tobago has considered and adopted measures designed to establish, maintain and strengthen systems for registration of income, assets and liabilities of persons exercising public functions in certain posts as specified by law, and, where appropriate, for making such disclosures public, in accordance with the comments in Chapter 2 of this report.

In view of the comments made in the above-mentioned paragraph, the Committee suggests that the Republic of Trinidad and Tobago consider strengthening systems for the disclosure of income, assets and liabilities. In meeting this recommendation, the Republic of Trinidad and Tobago may wish to consider the following measures:

- a. Amend the Integrity in Public Life Act at 41(2) so that approval of its form of declaration and regulations will be subject only to a negative resolution of Parliament, or to no resolution at all.
- b. Give more enforcement powers to the Integrity Commission so that it can impose penalties directly on a person in public life who is in violation of sections 11, 13 or 14, of the Integrity in Public Life Act.
- c. Review the possibility of making public the proceedings of a tribunal under 16(2) of the Integrity in Public Life Act.
- d. Ensure that provisions have been made by the Service Commissions to receive declarations of interests from Commission members.
- e. Review the provisions on declarations of interest to ensure that all public employees in appropriate positions are required to file declarations, including members of the Diplomatic Service and Advisers to the Government.
- f. Regulate the conditions, procedures and other aspects related to publicizing the declarations of income, assets, and liabilities, and registrable interests, as appropriate.
- g. Utilize the declarations of income, assets and liabilities and registrable interests in order to detect and prevent conflicts of interests and illicit enrichment.
- h. Create mechanisms, or implement those that already exist, such as mass media campaigns, information in educational establishments and public institutions, aimed at citizens in general and those who are interested in performing public functions, that help ensure broad knowledge about the purpose and scope of the provisions regarding the registration of income, assets, and liabilities and the public registry of interests.

- i. Ensure that a public register of interests has been established in accordance with the Integrity in Public Life Act, section 14.

3. OVERSIGHT BODIES RELATED TO THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4, AND 11 OF THE CONVENTION)

The Republic of Trinidad and Tobago has considered and adopted measures designed to establish, maintain and strengthen oversight bodies that carry out functions related to the effective enforcement of the provisions selected for review within the framework of the first round (Article III, paragraphs 1, 2, 4, and 11 of the Convention), in accordance with the comments in Chapter 2, paragraph 3 of this report.

In view of the comments made in the above section, the Committee suggests that the Republic of Trinidad and Tobago consider establishing mechanisms that allow for improved functioning and coordination among oversight bodies such as:

- a. Strengthen oversight bodies in their functions related to enforcement of Articles 1, 2, 4 and 11 of the Convention, in order to ensure that such control is effective; give them greater support and the resources necessary to carry out their functions; and establish mechanisms for coordinating their activities, as appropriate, and for their continuous evaluation and monitoring. In carrying out this recommendation, the following could be taken into account:
 - i. Clarify the role of the Permanent Secretary or Head of Department under the Civil Service (Amendment) Regulations.
 - ii. Amend the Public Service Commission Regulations to specifically provide that Permanent Secretaries and Heads of Department must report acts of misconduct that are not minor in nature to the Public Service Commission.
 - iii. Have all oversight agencies keep and systematize statistical information for the purpose of performing an objective evaluation of the results of the legal framework and other measures.

4. MECHANISMS TO PROMOTE PARTICIPATION BY CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11).

The Republic of Trinidad and Tobago has considered and adopted measures designed to establish, maintain and strengthen mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption, in accordance with Comments in Chapter 2, paragraph 4 of this report.

In view of the comments made in that section, the Committee suggests that the Republic of Trinidad and Tobago consider the following recommendations:

4.1 General Participation Mechanisms

The Committee encourages the Republic of Trinidad and Tobago to continue working on the implementation of formal mechanisms or statutory provisions expressly designed to stimulate the participation of civil society and of the non-governmental organizations in efforts intended to prevent corruption.

4.2 Mechanisms for Access to Information

Strengthen the mechanisms for ensuring public access to information. In meeting this recommendation, the Republic of Trinidad and Tobago could consider the following measures:

- a. Include under the reach of the Freedom of Information Act, reports of Commissions of Enquiry issued by the President once they have completed their investigations, and public authorities or functions of public authorities designated by the President, after review by the House of Representatives.
- b. Establish objective criteria that the President may take into account in exempting from the scope of the Freedom of Information Act certain documents of public authorities and Commissions of Enquiry.
- c. Consider reviewing the scope of the exemption on Cabinet documents.

4.3 Consultative Mechanisms

Supplement existing consultative mechanisms, establishing, as appropriate, procedures that will offer greater opportunities to hold public consultations before designing public policies and approving legal provisions. In meeting this recommendation, the Republic of Trinidad and Tobago could consider the following measures:

- a. Consider encouraging the House of Representatives to include in their Standing Orders, pending legislation as one of the matters into which the Joint Select Committees may seek input from civil society organizations.
- b. Adopt standards that provide for the possibility of having members of civil society and nongovernmental organizations become part of advisory councils or committees responsible for advising on the use of public resources.

4.4 Mechanisms to encourage participation in public administration

Strengthen and continue to implement mechanisms that encourage civil society and nongovernmental organizations to participate in public administration. In meeting this recommendation, the Republic of Trinidad and Tobago could consider the following measures:

- a. Continue to make comments from the media available to any area of government which may stand to benefit from them

- b. Develop and promote mechanisms and laws to encourage participation in public administration, and consider the advisability of creating new mechanisms to make it possible to monitor public administration for the purposes of the Convention.
- c. Make the response of the Opinion Leaders Group available to the public.
- d. Examine the advisability of an increase in the number of town meetings by holding them at regularly scheduled times and allow civil society to convene such meetings.
- e. Modify existing libel law in order to ensure that it cannot be used to silence public reporting on corruption and integrity issues.

4.5 Participation mechanisms in the follow-up of public administration

Strengthen and continue implementing mechanisms that encourage civil society and nongovernmental organizations to participate in the follow-up of public administration. To comply with this recommendation, the Republic of Trinidad and Tobago could consider the following measures:

- a. Adopt the measures necessary to ensure that new rules and standards on participation in the follow-up of public administration can be monitored and, as appropriate, enforced through the application of sanctions.
- b. Design and implement programs that publicize participatory mechanisms concerning the monitoring of public administration and, where appropriate, that train and provide the necessary tools to civil-society and nongovernmental organizations in order to use such mechanisms.
- c. Adopt methods that allow civil society and nongovernmental organizations to assist in the development of new participation mechanisms in the follow-up of public administration.
- d. Review whether the fine for knowingly and mischievously making a false complaint to the Integrity Commission is an impediment to civil society participation.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

The Republic of Trinidad and Tobago has adopted measures in relation to mutual technical cooperation and mutual assistance, in accordance with the provisions of Article XIV of the Convention, as described and reviewed in Chapter 2, paragraph 5 of this report.

In view of the comments made in that section, the Committee suggests that the Republic of Trinidad and Tobago consider the following recommendations:

- a. Determine and prioritize specific areas in which the Republic of Trinidad and Tobago considers that it needs the technical cooperation of other state parties to strengthen its capacity to prevent, direct, investigate and punish acts of corruption.
- b. Continue efforts to exchange technical cooperation with other State Parties on the most effective methods and means for preventing, detecting, investigating and punishing acts of corruption through the use of the OAS Convention against Corruption.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

The Republic of Trinidad and Tobago has adopted certain measures relative to the designation of the central authority referred to in Article XVIII of the Convention, as discussed in section 6, chapter II of this report.

In view of the comments made in section 6 Chapter II of this report, the Committee suggests that the Republic of Trinidad and Tobago consider the following recommendation:

- 6.1 Inform the General Secretariat of the OAS of the designation of the central authority or authorities for purposes of the international assistance and cooperation provided for in the Convention.

7. GENERAL RECOMMENDATIONS

Based on the review and the contributions that appear throughout this report, the Committee suggests that the Republic of Trinidad and Tobago consider the following recommendations:

- 7.1 Design and implement, as appropriate, training programs for public servants in charge of applying the systems, standards, measures and mechanisms considered in this report, with the objective of guaranteeing adequate knowledge, handling and implementation of the above.
- 7.2 Select and develop procedures and indicators, as appropriate, which enable verification of the follow-up to the recommendations contained in this report, and communicate the results of this follow-up to the Committee through the Technical Secretariat. With this in mind, consider taking into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee; as well, consider information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.
- 7.3 Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, as well as the recommendations in this report.
- 7.4 Systematize statistical records generated by the competent oversight agencies in order to make it possible to conduct an objective analysis of the results of the legal framework and other measures adopted

8. FOLLOW-UP

The Committee will consider the periodic update reports submitted by the Republic of Trinidad and Tobago concerning progress in implementing previous recommendations, within the framework of the plenary meetings of the Committee and in accordance with the provisions of Article 30 of the Rules of Procedure.

Similarly, the Committee will review the progress in implementing the recommendations made in this report, in accordance with the provisions of both Article 31 and, when and if appropriate, Article 32 of the Rules of Procedure.

**APPENDIX TO THE PRELIMINARY DRAFT REPORT ON THE IMPLEMENTATION IN
THE REPUBLIC OF TRINIDAD AND TOBAGO OF THE PROVISIONS OF THE
CONVENTION SELECTED FOR REVIEW WITHIN THE FRAMEWORK OF THE FIRST
ROUND**

The Republic Trinidad and Tobago submitted, along with its reply, annexes containing the following provisions and documents:

- ATTACHMENT 1) The Constitution of the Republic of Trinidad and Tobago
- ATTACHMENT 2) Tobago House of Assembly Act
- ATTACHMENT 3) Integrity in Public Life – A Review of Legislation – A Green Paper
- ATTACHMENT 4) The Integrity in Public Life Act, No. 83 of 2000
- ATTACHMENT 5) Civil Service (Amendment) Regulations, Legal Notice No. 217 of 1996
- ATTACHMENT 6) Police Service (Amendment) Regulations, Legal Notice No. 71 of 1990
- ATTACHMENT 7) Code of Ethics for Parliamentarians including Ministers
- ATTACHMENT 8) Public Service Commission Regulations (Chapter VIII)
- ATTACHMENT 9) Public Service Commission (Amendment) Regulations, L. N. No.28 of 1991
- ATTACHMENT 10) Report of the Police Service Commission 1995-1998 (Extract)
- ATTACHMENT 11) The Exchequer and Audit Act, Chapter 69:01
- ATTACHMENT 12) Report of the Auditor General on the Public Accounts of T&T
- ATTACHMENT 13) Strengthening Trinidad and Tobago's Anti-Corruption Legislation
- ATTACHMENT 14) Draft Prevention of Corruption (Amendment) Bill
- ATTACHMENT 15) Annual Report to Parliament by the Integrity Commission-2000
- ATTACHMENT 16) Annual Report to Parliament by the Integrity Commission-2001
- ATTACHMENT 17) The Freedom of Information Act, No. 26 of 1999
- ATTACHMENT 18) The Mutual Assistance in Criminal Matters Act, No. 39 of 1997
- ATTACHMENT 19) The Mutual Assistance Agreement between T&T and USA
- ATTACHMENT 20) The Trinidad and Tobago Transparency Institute Report on Activities-2001

ATTACHMENT 21) The Standing Orders of the House of Representatives

ATTACHMENT 22) The Commissions of Enquiry Act, Chapter 19:01

ATTACHMENT 23) Report from the Trinidad and Tobago Transparency Institute